
POLICY TRANSMITTAL NO. 04-25

DATE: JUNE 23, 2004

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; 2-3-1; 2-3-2; 2-3-12; 2-3-32 through 2-3-38; 2-3-45 through 2-3-47; 2-3-49 through 2-3-55; 2-3-61 through 2-3-65; 2-3-73; and 2-3-74.

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

Office of Client Advocacy (OCA) rules are revised to: (1) add new definitions and amend existing definitions to conform to recent amendments to the Vulnerable Adults Act, Section 10-101 of Title 10 of the Oklahoma Statutes; (2) eliminate unnecessary language; (3) correct and update contact information; (4) correct spelling and grammar errors; (5) designate time frames in terms of business days rather than working days; (6) indicate when a designee may be used; (7) add references to forms; (8) clarify to whom OCA investigation reports may be distributed; (9) specify time frames for certain activities; (10) repeal references to the Client Resolution Process that is no longer used; (11) clarify that the local grievance coordinator (LGC) may communicate with grievants by means other than in-person meetings; (12) provide for state office administrators to request review by the Oklahoma Department of Human Services (OKDHS) Director when a grievant has accepted the proposed resolution of the Grievance and Abuse Review Committee; (13) clarify that Ombudsman services to former residents of the Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer) are provided only when staffing resources are available; and (14) make non-substantive changes to improve the clarity of these rules.

Original signed on 5-3-04

Judith G. Storandt, Advocate General
Office of Client Advocacy

Marilynn Knott, Administrator
Office of Planning, Policy & Research

WF # 04-05 (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.

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PART 1. ADMINISTRATION**340:2-3-1. Purpose**

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Policies relating to:

- (1) administrative investigations conducted by OCA are in OAC 340:2-3-32 through 340:2-3-38;
- (2) investigations of alleged retaliation or discrimination against a foster parent are in OAC 340:2-3-38;
- (3) disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees in response to OCA investigation findings are in OAC 340:2-3-12;
- (4) grievance systems maintained by OCA are in OAC 340:2-3-45 through 340:2-3-55;
- (5) the Grievance and Abuse Review Committee (GARC) are in OAC 340:2-3-61 through 340:2-3-65; and
- (6) OCA Ombudsman Programs are in OAC 340:2-3-71 through 340:2-3-75.

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 of 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 who live 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, whichever is 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 with regard to 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 injury 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" and **"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, 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 DDSD, is monitored by DDSD, and is funded through the Home and Community-Based Waiver Services Program administered by DDSD.

"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) DDSD clients, the director of DDSD; 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.***

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees

(a) **Application.** This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37 that an OKDHS employee has engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when:

(1) OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) in accordance with OAC 340:2-3-62(b) has expired without a timely request having been received by OCA; or

(2) a timely request for GARC review has been received and has been processed to conclusion in accordance with OAC 340:2-3-62.

(b) **Supplemental investigations.**

(1) Upon receipt of an OCA investigation report, if the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA to conduct a supplemental investigation. A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and it sets out the specific information needed. No more than one such request may be made in an individual case. OCA conducts a prompt supplemental investigation, commencing it within 30 calendar days and completing it within 60 calendar days of receipt of a request for a supplemental investigation, unless these time periods are extended for good cause as determined by the advocate general or the OKDHS Director.

(2) Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee may request the case be submitted to GARC in accordance with OAC 340:2-3-62.

(c) **Disciplinary guidelines.** These guidelines are used by state office administrators and their designees to determine appropriate personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.

(1) **Abuse, sexual abuse, or neglect.**

(A) **First offense.** The first offense can result in discharge, demotion,

suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.

(B) **Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.

(2) **Caretaker misconduct resulting in physical injury or mental anguish.**

(A) **First offense.** The first offense can result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.

(B) **Second offense.** The second offense can result in discharge, demotion, or suspension without pay.

(3) **Caretaker misconduct not resulting in physical injury or mental anguish.**

(A) **First offense.** The first offense can result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.

(B) **Second offense.** The second offense can result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.

(4) **Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.

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.

(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;

(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 ■ 1

(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. ■ 2

(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;
- (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. **Allegations of self-neglect are referred to and handled by the Oklahoma Department of Human Services (OKDHS) Adult Protective Services Unit.**
2. **(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, 340:105-3-34(a)(7), 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 regarding confidentiality 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 manager for investigations and the advocate general.

340:2-3-33. Procedure for reporting suspected abuse, neglect, verbal abuse, caretaker misconduct, and exploitation**(a) Reporting requirements and reportable incidents.**

(1) Persons having reason to believe that a minor is a victim of abuse or neglect are required by Section 7103 of Title 10 of the Oklahoma Statutes to promptly report it to the Oklahoma Department of Human Services (OKDHS).

(2) Persons having reason to believe that a vulnerable adult is a victim of abuse, neglect, verbal abuse, or exploitation are required by Section 10-104 of Title 43A of the Oklahoma Statutes to promptly report it to OKDHS. This reporting requirement applies to providers, as defined in OAC 340:2-3-2, and their employees and agents.

(3) In addition, employees of OKDHS, Department of Rehabilitation Services (DRS), Department of Mental Health and Substance Abuse Services (DMHSAS), Office of Juvenile Affairs (OJA), and the J.D. McCarty Center who have reason to believe that caretaker misconduct, as defined in OAC 340:2-3-2, with regard to a client has occurred promptly report it to OCA intake. This reporting requirement also extends to employees of private facilities that contract with OKDHS, DRS, DMHSAS, and OJA to provide residential services to these clients.

(4) A person can have reason to believe that maltreatment has occurred based on information they have learned directly or indirectly, including information provided by the alleged victim or witnesses to an incident. When an allegation of maltreatment is made by the alleged victim or the guardian or parent of the alleged victim, it is reported to OCA intake. Persons unsure of what to report call OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(5) Knowledge of circumstances which may constitute maltreatment is reported even if the person reporting it cannot substantiate the information.

(6) In addition to the reportable incidents in paragraphs (1), (2), and (3) of this subsection, employees and agents of OKDHS, DRS, DMHSAS, OJA, the J.D. McCarty Center, facilities, and providers report to OCA events listed in (A) through (G) of this paragraph involving a person listed in OAC 340:2-3-32(a)(2):

(A) a violent death, whether apparently homicidal, suicidal, or accidental; ■ 1

(B) a death under suspicious, unusual, or unnatural circumstances;

(C) the death of a resident of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer);

(D) the death of a Hissom class member;

(E) a serious physical injury, as defined in OAC 340:2-3-2, of a resident of NORCE, SORC, or Greer;

(F) a serious physical injury, as defined in OAC 340:2-3-2, if it is:

(i) unexplained; or

(ii) suspicious; and

(G) rape, sodomy, or other sexual activity prohibited by state law.

(7) "Promptly" reporting as used in this Subchapter means the same day or the next working day.

(8) The reporting obligations under this Section are individual. Employers, supervisors, and administrators do not impede or inhibit the reporting obligations of any employee or other person.

(b) Reporting responsibilities.

(1) **Reportable incidents.** Reportable incidents are defined in subsection (a) of this Section.

(2) **Minors and youth.** An OKDHS employee with knowledge of a reportable incident involving a minor or youth who is an OCA client, as defined in OAC 340:2-3-32(a)(2), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident involving an OCA client is required by law to make a prompt report to OCA intake, Child Welfare in an OKDHS local county office, or the statewide, toll free hotline (the "hotline"), 1-800-522-3511. Referrals to OCA intake are made in accordance with subsection (e) of this Section.

(3) **Vulnerable adults.** An OKDHS employee who has knowledge of a reportable incident involving a vulnerable adult who is an OCA client, as defined in OAC 340:2-3-32(a), is required to make an immediate referral to OCA intake. Any other person who has knowledge of this type of reportable incident is required by law to

make a report as soon as possible to OCA intake, the office of the district attorney in the county in which the alleged incident happened, or the local municipal police or sheriff's department.

(4) **Immunity from liability.** Oklahoma law provides that any person exercising good faith and due care in making a report of alleged abuse, neglect, verbal abuse, or exploitation pursuant to the Oklahoma Child Abuse Reporting and Prevention Act or the Oklahoma Protective Services for Vulnerable Adults Act shall have immunity from any civil or criminal liability the person might otherwise incur.

(5) **Questions about reporting.** A person who is uncertain if a particular incident is reportable contacts OCA intake, 1-800-522-8014, during business hours, and after hours call the Abuse Hotline, 1-800-522-3511.

(c) **Failure to report.** Any person who knowingly and willfully fails to promptly report a reportable incident as provided for in this Section may be subject to administrative action or criminal sanctions. Section 10-104(C) of Title 43A and Section 7103(C) of Title 10 of the Oklahoma Statutes makes failure to report a misdemeanor, upon conviction. In addition, failure to report by an OKDHS employee may result in disciplinary action.

(d) **False reporting.**

(1) Any person who knowingly and willfully makes a false report regarding alleged maltreatment of a minor, or a report that the person knows lacks factual foundation, may be reported by OKDHS to local law enforcement for criminal investigation and, upon conviction, is guilty of a misdemeanor.

(2) With regard to vulnerable adults, any person who willfully or recklessly makes a false report may be liable in a civil action for any actual damages suffered by the person(s) being reported and for any punitive damages set by the court or jury.

(e) **Method of reporting.**

(1) Any person obligated to report an allegation of suspected abuse, neglect, verbal abuse, or exploitation of an OCA client, or caretaker misconduct towards an OCA client, contacts OCA intake in Oklahoma City by telephone at 1-405-525-4850 or 1-800-522-8014, between 8:00 a.m. and 5:00 p.m. on normal business days. At all other times, the Statewide Abuse Hotline, 1-800-522-3511 accepts referrals on behalf of OCA. Referrals also are made by completing Form OCA-1, Office of Client Advocacy Intake Referral, and transmitting it by fax 1-405-525-4855, to OCA, Attn: OCA intake, or sending the same information in an e-mail addressed to

*OCA.intake@okdhs.org.

(2) Allegations of exploitation of residents of SORC, NORCE, and Greer are reported to the person designated by the facility administrator to receive and investigate reports of those allegations.

(3) In lieu of contacting OCA intake, employees of SORC, NORCE, and Greer also have the option of contacting OCA's ombuds staff assigned to those facilities or the quality assurance staff at those facilities. OCA employees and facility staff who receive information about a reportable incident promptly contact OCA intake to transmit that information.

(f) **Confidentiality of reporting party's identity.** OCA keeps confidential the identity of a person who reports an incident involving a vulnerable adult in accordance with Section 10-105(2) of Title 43A of the Oklahoma Statutes, and of a person who reports an incident involving a minor or youth in accordance with Section 7005-1.2(G)(7) of Title 10 of the Oklahoma Statutes. OCA accepts anonymous referrals.

(g) **Retaliation prohibited.** 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.

(h) **Staff training.** All administrators ensure their employees receive relevant training regarding their reporting responsibilities detailed in this Section. Except for employees of a Developmental Disabilities Services Division (DDSD) provider, employees receive this training within 30 calendar days of initial employment and subsequent training annually. The training for employees of DDSD providers is in accordance with OAC 340:100-3-38.

INSTRUCTIONS TO STAFF

- 1. The death of a Developmental Disabilities Services Division (DDSD) client is reviewed pursuant to OAC 340:100-3-35.**

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 of illegal drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money or property, 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. 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 drugs, domestic abuse, illegal sexual activity, illegal use of alcohol, theft of money or property, 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 conference.** 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 the preliminary investigative finding and any areas of concern identified, and that a written report will be prepared with the final finding.

(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.

(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:

(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.** 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 OCA format for CCR reports, Form OCA-7, Caretaker Conduct Review Report. 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

DDSD 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) "**Administrator₁**" with regard to a child placing agency₁ 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 (b)(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 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.

(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 (b) 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 conference.** The OCA investigator conducts an exit conference, either in person or by telephone, with 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 of the preliminary investigative finding and that a written report is forthcoming.

(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(I);

(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, the LGC meets with 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 – DDSD Clients, OCA-GR-8-B, Notice of Summary Disposition of Facility Grievance, or OCA-GR-8-C, Notice of Summary Disposition of DDSD 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 five working 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; and
- (v) within 60 calendar days of being designated LGC, receives OCA 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 the OCA.
- (B) Each facility and provider subject to this Part, each OKDHS county office, and each DDSD 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 - DDSD 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 - DDSD 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 DDS 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 DDSD area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDSD 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(b)(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.

340:2-3-47. Grievances of minors in OKDHS custody living in private residential facilities

(a) **Application.** This Section describes processes relating to grievances of minors in the Oklahoma Department of Human Services (OKDHS) custody who are residing in a private residential child care center which contracts with OKDHS.

(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.** The applicable Child Welfare liaison gives Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody, to the client within 24 hours of placement of the client in a private residential placement, and annually thereafter. This form is used to identify the local grievance coordinator (LGC) and to explain the client's right to grieve. After the client signs the form, a copy is made for the client and the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested OKDHS grievances of residents are processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with this subsection. When a grievant in a private residential facility asks to appeal a grievance, within three business days of that request the LGC transmits to the chair of the facility's board of directors, or an appeals committee designated by the board, Form OCA-GR-1A, Local Grievance Coordinator Worksheet, which has attached to it the corresponding Form OCA-GR-1 and other documents and information relevant to the subject matter of the grievance. The chair of the board of directors or appeals committee responds within ten business days by sending a written response to the LGC. A copy is attached to the applicable quarterly grievance report sent to the OCA grievance coordinator in accordance with OAC 340:2-3-45(h)(2). Within two calendar days of receipt of the response, the LGC communicates the response to the grievant. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

340:2-3-49. Grievances of minors in OKDHS custody and youth in voluntary care living in other residential settings

(a) **Application.** This Section describes processes relating to grievances of minors in Oklahoma Department of Human Services (OKDHS) custody who are residing in their own home, minors in OKDHS custody and youth in voluntary care in any type of foster care, and minors in OKDHS custody or youth in independent living who want to file an OKDHS grievance.

(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.** The assigned Child Welfare worker gives Form OCA-GR-2, Notice of Grievance Rights - Minors in OKDHS Custody, to the placement provider and to the client upon placement of the client, and annually thereafter. This form is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client signs the form, a copy is given to the client and the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** If the grievant files an OKDHS grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested grievances of residents are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

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.** 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.

340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (OKDHS) operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes, the "residents," who want to file a grievance. Section 1415.1 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility for establishing an ombudsman program which includes a grievance system at each OKDHS operated facility for persons with developmental disabilities.

(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-3, Notice of Grievance Rights - DDSD Clients (General), is given by the Developmental Disabilities Services Division (DDSD) facility to a resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. This form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs the form, a copy is given to the resident or to the resident's guardian, or close family member if the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed in accordance with OAC 340:2-3-45(g) unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an ombuds office on campus at SORC and NORCE. OCA assigns advocates to its ombuds offices at the facilities who serve as the LGC at those facilities and Greer and provides assistance to residents, their guardians, and persons interested in their welfare who want to file a grievance. [OAC 340:2-3-71(h)(4)]

(2) The OCA advocates at a facility send a copy of a grievance to the guardian or guardian ad litem of the resident and to the parent, unless contraindicated.

(3) If a grievance involves a decision of a resident's team, the first level respondent is the applicable unit coordinator.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not

apply to grievances filed by or on behalf of residents.

(f) **Second level problem resolution.** The facility director is the second level respondent.

(g) **Contested grievances.** When a resident asks to contest the administrator's response to a grievance, the contested grievance is processed in accordance with OAC 340:2-3-46. The DDS director or designee is the state office administrator responsible for responding to contested grievances of residents. ■ 1

(h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests review by GARC of the DDS director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using a format prescribed by OCA which includes the information listed in subsection (i) of this Section.

(i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application, or interpretation of any policy, rule or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior, or action of an OKDHS employee, agent, or contractor, or of another resident.

(1) An advocate formal inquiry is submitted directly to the facility director or any other OKDHS employee believed to have the knowledge to respond to the inquiry. The person to whom the inquiry is submitted has seven business days from receipt of the inquiry to respond in writing. The advocate general can grant an extension.

(2) If the response does not resolve the concern which prompted the formal inquiry, or if a response is not timely received, the matter may be treated as a formal grievance and processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The advocate general issues a report that 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.

(j) **Advocate grievance.** An OCA advocate can file a grievance on behalf of a resident even when a grievance has not been filed by or on behalf of a resident.

(1) At the discretion of the advocate general or designee, an advocate grievance is filed directly with the facility director. The facility director has seven business days to respond in writing. The advocate general can grant an extension for the facility director's response.

(2) If the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(k) **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 facility director or 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.

INSTRUCTIONS TO STAFF

1. The Office of Client Advocacy (OCA) advocate prepares a contested grievance cover memo using a format prescribed by OCA which includes:

(1) the grievance number and the name of the client, grievant, guardian(s) or the parent(s), Developmental Disabilities Services Division (DDSD) case manager, and OCA advocate;

(2) the problem the grievance seeks to resolve;

(3) the procedural history of the grievance, including what efforts were made to resolve the problem by means of informal problem resolution;

(4) the grievant's proposed resolution;

(5) relevant statutes, policies, and other authorities;

(6) relevant documents;

(7) the advocacy position of OCA; and

(8) copies attached of the applicable Form OCA-GR-1, Grievance Form, and Form OCA-GR-1-A, Local Grievance Coordinator's Worksheet.

340:2-3-52. Grievances of Hissom class members

(a) **Application.** This Section describes processes relating to grievances of Hissom class members. The Oklahoma Department of Human Services (OKDHS) legal basis and authority for grievance policies and procedures for Hissom class members includes orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound, et al., vs. The Hissom Memorial Center*, Case No. 85-C-437-E.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-46(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The Office of Client Advocacy (OCA) advocate assigned to a Hissom class member gives Form OCA-GR-3-A, Notice of Grievance Rights – Hissom Class Members, at least yearly to each class member or his or her guardian(s), close family members, and volunteer advocates. This form is used to identify the OCA advocate assigned to the class member and to explain the class member's right to grieve. After the class member, guardian(s), or both, sign the form, the advocate documents this in a contact sheet and provides copies to the client or the client's guardian, the assigned Developmental Disabilities Services Division (DDSD) case manager, and the program coordinator of the applicable provider for placement in the client's home record. The original is maintained in OCA's record for the class member.

(d) **Filing and processing of grievances.** Grievances of class members are processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) OCA assigns an advocate to represent each class member. The assigned advocate serves as the grievance advisor for the class member and provides assistance to class members and persons interested in their welfare who want to file a provider or OKDHS grievance. [OAC 340:2-3-71(h)(4)] When an advocate files a provider or OKDHS grievance on behalf of a class member, the advocate contemporaneously provides a copy of the grievance to the DDSD case manager assigned to the class member and to the DDSD programs administrator for community services. ■ 1

(2) Class members, their guardians, volunteer advocates and other advocates, case managers, personal support team members, and persons interested in their welfare also can file an OKDHS grievance by submitting Form OCA-GR-1, Grievance Form, to the local grievance coordinator (LGC) in the appropriate DDSD area office. When the LGC receives a grievance that has not been submitted by the OCA advocate representing the class member, the LGC promptly informs the advocate of the

grievance by e-mail, fax, or telephone.

(3) If a grievance involves a decision of a class member's team, the first level respondent is the supervisor of the client's DDSD case manager.

(e) Provider grievances.

(1) Each residential and vocational provider that contracts with DDSD to provide services to Hissom class members has a grievance system for resolution of grievances. The provider's written grievance policies, forms, and procedures are in compliance with OAC 340:2-3-45.

(2) Provider grievances are initiated by the class member, the assigned OCA advocate, or a person interested in the welfare of the class member by using Form OCA-GR-1 or the provider's grievance form. The completed grievance form is submitted to the provider's grievance coordinator. Upon receipt of a provider grievance by or on behalf of a Hissom class member by anyone other than the OCA advocate or the DDSD case manager for the class member, the LGC promptly informs the DDSD case manager and the advocate assigned to the class member by e-mail, fax, or phone. If an OKDHS employee initiates a grievance on behalf of a class member, at the time the grievance is filed the employee sends a copy to the DDSD case manager and the OCA advocate assigned to the class member.

(3) If the subject matter of a grievance can be submitted for resolution as a provider grievance or an OKDHS grievance, the class member has the option to file it as a provider grievance, an OKDHS grievance, or both.

(f) Time limits on filing grievances. The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of Hissom class members.

(g) 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.

(h) Second level problem resolution. The area manager of the appropriate DDSD area office is the individual responsible for responding to an OKDHS grievance at the second level of problem resolution.

(i) Contested grievances. When the response to an OKDHS or provider grievance is

contested by a class member or a grievant on behalf of a class member, the contested grievance is processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. The director of DDS is the state office administrator responsible for responding to contested grievances of class members. ■ 2

(j) **Request for review by the Grievance and Abuse Review Committee (GARC).** When a Hissom class member requests review by GARC of the DDS director's response to a grievance, the OCA grievance coordinator prepares a request for GARC review using the format prescribed by OCA that includes the information listed in subsection (i) of this Section.

(k) **Formal inquiry.** The advocate general or any OCA advocate staff may file a formal inquiry to request information relating to: the treatment of a client; the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior or action of an OKDHS employee, agent or contractor, or of another client.

(1) A formal inquiry is submitted directly to the administrator of a community services provider or the appropriate DDS area manager. An advocate general formal inquiry is submitted to the director of DDS. The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(2) If the response to the formal inquiry does not resolve the concern that prompted the formal inquiry, the matter may be treated as a formal grievance and processed as a contested grievance.

(3) The advocate general issues a report that 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.

(l) **Advocate grievances.** An OCA advocate may file a grievance on behalf of a class member even though a grievance has not been filed by or on behalf of the class member.

(1) At the discretion of the advocate general or designee, an advocate grievance is submitted directly to the administrator of a provider or the appropriate DDS area manager.

(2) An advocate general grievance is submitted directly to the director of DDS or the administrator of the provider agency, whichever is applicable.

(3) The person to whom it is submitted has seven business days to respond in writing. The advocate general can grant an extension.

(4) If the response to a grievance is not acceptable, or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(m) **Monitoring of grievance programs.** Providers submit their policies for review and approval by the advocate general. OCA provides training and technical assistance to providers, at their request, in the development of grievance forms and procedures. OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (h).

INSTRUCTIONS TO STAFF

- 1. The Office of Client Advocacy (OCA) advocates also copy the e-mail to all parties designated in OCA directives regarding document distribution.**
- 2. The OCA advocate prepares a contested grievance cover memo using a format prescribed by OCA which includes:**
 - (1) the grievance number and the name of the client, the grievant, the guardian(s) or the parent(s), the Developmental Disabilities Services Division (DDSD) case manager, and the OCA advocate;**
 - (2) the problem the grievance seeks to resolve;**
 - (3) the procedural history of the grievance, including what efforts were made to resolve the problem by means of informal problem resolution;**
 - (4) the grievant's proposed resolution;**
 - (5) relevant statutes, policies, and other authorities;**
 - (6) relevant documents;**
 - (7) the advocate's summary of the client's position; and**
 - (8) copies attached of the applicable Form OCA-GR-1, Grievance Form, and Form OCA-GR-1-A, Local Grievance Coordinator's Worksheet.**

340:2-3-53. Grievances of clients receiving services from the Developmental Disabilities Services Division (DDSD)

(a) **Application.** This Section describes processes relating to grievances of clients receiving services from the Developmental Disabilities Services Division (DDSD) who are not residing in an Oklahoma Department of Human Services (OKDHS) operated facility and are not Hissom class members. This Section includes minors and adults in specialized foster care.

(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.** The DDSD case manager gives Form OCA-GR-3, Notice of Grievance Rights - DDSD Clients (General), to the service recipient, or guardian if applicable, at the initial plan of care meeting and at each annual plan of care meeting thereafter. If the service recipient does not have a DDSD case manager, the provider gives Form OCA-GR-3 to the service recipient within 30 calendar days of service initiation and annually thereafter. Form OCA-GR-3 is used to identify the local grievance coordinator and to explain the client's right to grieve. After the client or guardian signs the form, the original is maintained in the permanent record for the client.

(d) **Filing and processing of grievance.** Provider and OKDHS grievances are filed and processed in accordance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team, the first level respondent is the supervisor of the client's case manager.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of these clients.

(f) **Contested grievances.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(g) **Monitoring grievance programs.** OCA, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors provider grievance programs in accordance with OAC 340:2-3-45(d) through (m).

340:2-3-54. Grievances of residents of private group homes for individuals with developmental disabilities

(a) **Application.** This Section describes processes relating to grievances of residents of private group homes subject to Section 1430.01, et seq., of Title 10 of the Oklahoma Statutes. The Oklahoma Department of Human Services (OKDHS) legal authority includes Sections 1430.11 and 1430.20 of Title 10 of the Oklahoma Statutes.

(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.** Upon admission, each individual and, if appropriate, the resident's family or designated representative is given a copy of the group home's grievance procedure and a written notice which identifies the group home's grievance coordinator and explains the resident's right to file grievances. After the resident or the resident's guardian signs the notice form, a copy is made for the resident or the resident's guardian. A copy also is sent to the resident's DDS case manager if one is assigned. The original is maintained in the resident's permanent record. The grievance procedure is reviewed with the resident or the resident's guardian at least one time a year.

(d) **Grievance policies required.** Every private group home to which this Section applies is required to operate a system for resolution of grievances by residents using policies and procedures in compliance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team and the resident has a DDS case manager, the first level respondent is the supervisor of the client's case manager.

(e) **Contested grievances appealed to the state office.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(f) **Monitoring grievance programs.** The Office for Client Advocacy, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors group home grievance programs in accordance with OAC 340:2-3-45(d) through (h).

340:2-3-55. Grievances of OKDHS clients not covered by another grievance system

(a) **Application.** This Section describes the grievance policy for persons receiving Oklahoma Department of Human Services (OKDHS) services not covered by another grievance system or issues not specifically addressed by OKDHS fair hearing process. A grievance or complaint is not processed under this Section if OKDHS has a formal administrative appeal or review process in place which addresses the grievance or complaint.

(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 client bill of rights.** The OKDHS Client Bill of Rights poster, OKDHS Pub_ No. 92-06, is posted in conspicuous view of the public in all OKDHS offices and facilities. Applicants and recipients of benefits and services administered by OKDHS have the right to:

- (1) be treated with courtesy and dignity;
- (2) receive prompt service;
- (3) receive clear explanations of the laws and rules which determine eligibility for benefits and services;
- (4) have benefits and services explained in native language, if not able to understand English;
- (5) have benefits and services explained by an interpreter for the deaf, if unable to hear well;
- (6) have forms read and explained, if unable to read forms because of limited eyesight, or other inability to read;
- (7) receive fair and consistent consideration of any application for benefits or services;
- (8) have the opportunity for an appeal and a fair hearing in case of denial or reduction of benefits or services;
- (9) discuss with a local OKDHS supervisor any complaint regarding OKDHS benefits or services or treatment by OKDHS staff;

(10) contact the OKDHS Office of Client Advocacy (OCA) at 1-800-522-8014, regarding any complaint that has been discussed with, but not resolved by, the local office supervisory staff; and

(11) receive, upon request, a further explanation of applicant or client rights.

(d) **Filing a grievance.** Recipients of benefits and services administered by OKDHS, and persons acting on behalf of recipients, have the right to talk with a local OKDHS supervisor if they have a complaint about the way they were treated by OKDHS staff. Supervisory staff promptly seek to resolve the matter with the client. Clients have the right to contact OCA, Attn. Grievance Coordinator, P.O. Box 25352, Oklahoma City, OK 73125 (1-405-525-4850 or 1-800-522-8014, fax 1-405-525-4855) regarding any complaint which has been discussed with, but not resolved by, the local office supervisory staff.

(e) **Allegations of discrimination.** If a grievance or complaint alleges discrimination based on sex, age, national origin, religion, color or disability, the client is referred to the OKDHS Office for Civil Rights for appropriate handling and resolution of the complaint. The local grievance coordinator immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(f) **Processing a grievance.** When a client contacts OCA for assistance in resolving a complaint, OCA contacts OKDHS supervisory staff who have the authority to resolve the grievance to request a response to the grievance within seven business days.

(1) The advocate general may grant an extension for good cause, such as an unusually complex matter.

(2) If a complete response is not timely received by OCA, the grievance may be considered unresolved and processed as a contested grievance.

(3) After receiving a response to the grievance, OCA contacts the grievant to inform the grievant of the proposed resolution and the right to contest the response to the grievance. If the grievant is not satisfied with the outcome and requests to appeal the decision, the grievance is processed as a contested grievance. If OCA does not obtain a reply from the grievant within ten business days of actual notice to the grievant of the proposed response, the grievance may be deemed resolved.

(g) **Contested grievances.** Contested grievances of clients are processed in accordance with OAC 340:2-3-46.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-61. Grievance and Abuse Review Committee (GARC)

(a) **Legal basis and authority.** The legal basis and authority for the rules in this Part are found in Section 7004-3.4 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC 340:2-3-2, 340:2-3-32, and 340:2-3-38 apply to this Part.

(c) **Purpose.** This Section establishes an administrative review committee to review:

(1) findings regarding allegations of abuse, neglect, verbal abuse, caretaker misconduct, and exploitation investigated by the Office of Client Advocacy (OCA) in accordance with OAC 340:2-3-32 through 340:2-3-37;

(2) findings regarding allegations of discrimination and retaliation brought by foster parents pursuant to Section 7204.1 of Title 10 of the Oklahoma Statutes and investigated by OCA in accordance with OAC 340:2-3-38;

(3) unresolved contested grievances of Oklahoma Department of Human Services (OKDHS) clients listed in OAC 340:2-3-45(a)(2) and processed in accordance with OAC 340:2-3-46 through 340:2-3-49 and 340:2-3-51 through 340:2-3-55;

(4) unresolved grievances of foster parents filed pursuant to Sections 7213 of Title 10 of the Oklahoma Statutes and processed in accordance with OAC 340:2-3-50; and

(5) an issue affecting the care and treatment of:

(A) a client in an OKDHS operated facility; or

(B) a minor in OKDHS custody placed in a private facility, a public facility not operated by OKDHS, or in a foster home.

(d) **GARC composition.**

(1) GARC is composed of at least three voting members appointed by the OKDHS Director. The OKDHS Director designates one member to serve as chair and appoints substitute members as needed.

(2) The advocate general is an ex officio member of GARC. The advocate general

designates a member of his or her staff to attend GARC meetings in the advocate general's absence.

(e) **GARC responsibilities.** GARC meets as needed. The advocate general or designee establishes the date and time of each meeting. At least three business days before a meeting, the advocate general provides each GARC member with materials relevant to matters to be considered at the meeting. GARC members review the agenda material prior to the GARC meeting.

(f) **GARC meetings.**

(1) The advocate general or designee coordinates GARC meetings. This includes:

(A) arranging the dates for GARC meetings;

(B) establishing the agenda for GARC meetings;

(C) eight calendar days prior to a GARC meeting, notifying all involved administrators and state office administrators of the date of the GARC meeting;

(D) transmitting agenda material to GARC members three business days prior to a meeting;

(E) recording the findings and recommendations of GARC;

(F) preparing GARC reports in consultation with GARC members;

(G) granting extensions of time for good cause shown; and

(H) distributing GARC reports.

(2) The GARC chair conducts a GARC meeting in the manner that in his or her discretion furthers the purposes of the meeting.

(3) At the conclusion of the GARC meeting, the matter is taken under advisement and the GARC chair informs interested parties of the results by means of GARC's written report.

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 reasons review is requested.

(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) GARC's opinion whether 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.

340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances

(a) **Application.** GARC reviews unresolved contested grievances when the advocate general receives a proper request for GARC review in accordance with OAC 340:2-3-46(k).

(b) **The GARC worksheet.** If the grievance was filed by or on behalf of a Developmental Disabilities Services Division (DDSD) client who receives Office of Client Advocacy (OCA) ombuds services, including residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA which includes:

- (1) the grievance number and the names of the resident, grievant, guardian, parent(s), case manager, and OCA advocate;
- (2) what efforts were made to resolve the problem by means of informal problem resolution;
- (3) the applicable statutes, policies, and other authorities;
- (4) the resolution sought by the grievant;
- (5) relevant documentation;
- (6) the OCA advocacy position with regard to the subject of the grievance; and
- (7) a copy of Form OCA-GR-1, Grievance Form, and Form OCA-GR-1-A, Local Grievance Coordinator's Worksheet.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

- (1) Within three business days of receiving a proper request for GARC review pursuant to OAC 340:2-3-46(k), the advocate general or designee informs the affected state office administrator and administrator of the date of the GARC meeting.
- (2) The grievant, administrators, state office administrators, and their designees may attend the GARC meeting to answer questions. If a grievance involves a Hissom class member, the OCA programs administrator for the community ombuds program also attends.

(3) If the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general contemporaneously with the request for GARC review. If the administrator or affected state office administrator wants to submit additional evidence not considered during the processing of the grievance, or when GARC review is the result of an untimely response in accordance with OAC 340:2-3-46(I), or for good cause shown, evidence can be submitted to the advocate general seven 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 grievance until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review an unresolved grievance, GARC prepares a report that includes:

(1) the subject matter of the grievance and identifying information about the grievant, the administrator, and the state office administrator;

(2) the procedural history of the grievance, identifying proposed resolutions and responses at each step in the grievance process prior to the GARC review;

(3) the resolution sought by the grievant and the resolution proposed by the state office administrator;

(4) GARC's recommended resolution of the grievance;

(5) the facts on which GARC bases its recommendation;

(6) the information GARC considered in making its recommendation; and

(7) areas of concern identified by GARC during its review of the case regarding facility or OKDHS practices or procedures.

(e) **Distribution of GARC report.** The advocate general forwards GARC's report to the applicable local grievance coordinator (LGC). Within two business days of receipt of GARC's report, the LGC contacts the grievant to inform the grievant of GARC's recommended resolution, and determines if the grievant is satisfied with it.

(1) 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.

(2) If the grievant is satisfied, the LGC notifies the advocate general, and the advocate general then notifies interested parties. An affected state office administrator has three business days from receipt of this notification to submit to the advocate general a written request for review by the Oklahoma Department of Human Services (OKDHS) Director.

(3) If the grievant is not satisfied with GARC's recommended resolution and desires to contest it, the LGC notifies the advocate general within four business days of receipt of the GARC report. The advocate general transmits the request and GARC's report for review by the OKDHS Director.

(f) OKDHS Director's review of a GARC recommendation. Upon receipt by the advocate general of a proper and timely written request for review by the OKDHS Director, pursuant subsection (e) of this Section, the advocate general or designee transmits the request and the GARC report to the OKDHS Director.

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

- (A) adopt GARC's recommended resolution;
- (B) adopt GARC's recommendation with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) direct another resolution of the grievance.

(2) If the OKDHS Director does not respond within 15 business days, the grievance is deemed resolved in accordance with GARC's recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The grievant is informed that this concludes the grievant's administrative remedies. If the grievant is a minor, a copy of the grievance and related materials are forwarded to the Office of Juvenile Systems Oversight in the Oklahoma Commission for Children and Youth.

(g) Monitoring of resolution. If the final resolution of the grievance involves an action to be taken by an OKDHS employee at a future date, the advocate general or designee

identifies the target date and monitors compliance with that deadline. In the event of non-compliance, the advocate general notifies the OKDHS Director in writing.

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

(a) The advocate general convenes a meeting of GARC at the request of the Oklahoma Department of Human Services (OKDHS) Director, an OKDHS chief, or an OKDHS division director to review and make recommendations with respect to any issue affecting the care and treatment of:

(1) a client in an OKDHS operated facility; or

(2) a minor in OKDHS custody placed in a private facility, a public facility not operated by OKDHS, or in a foster home.

(b) Issues affecting the care and treatment of clients and minors in OKDHS custody include:

(1) OKDHS policy, programs, or practices; and

(2) employee actions which may affect care and treatment.

(c) At least seven business days prior to the GARC meeting, the person requesting the meeting and any interested party submit to the advocate general documentary information to be considered during GARC's review.

(d) At least seven business days before the GARC meeting, the person requesting the meeting and any interested party informs the advocate general who will attend the meeting to provide information.

(e) The advocate general or the GARC chair can request the attendance of any OKDHS employee considered to have knowledge pertinent to the subject matter of the review.

(f) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from the Office of Client Advocacy, an administrator, or a state office administrator.

(g) Within 15 business days of a GARC meeting, GARC issues a report summarizing the issue(s) presented for review and GARC's recommendations. The advocate general submits the report to the person requesting the review and copies the OKDHS Director.

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)

(a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to former residents of SORC, NORCE, and Greer ("the facilities") for whom the facility director is the guardian ad litem (GAL). Oklahoma Department of Human Services (OKDHS) has conferred on OCA responsibilities for each of these individuals until the court relieves the facility director of GAL responsibilities. Ombudsman and advocacy services are provided to former residents of the facilities consistent with Section 71 of this Subchapter.

(b) **Representation.** A person eligible for OCA services pursuant to this Section is assigned to an OCA advocate to represent the client's interests when OCA has adequate staff resources to provide such services. An advocate is assigned 30 calendar days prior to the date identified to transition the client. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.

(c) **Team membership.** As a representative of a Developmental Disabilities Services Division (DDSD) client living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's DDSD case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures a client has a current guardianship assessment and attends guardianship assessment meetings. If a client has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment or limit it, as the case may be. If the current guardianship assessment for the client recommends a guardian, volunteer advocate, or both, the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. An advocate encourages the development of friends in the community who might become a guardian or advocate for the client. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment and to appoint a guardian.

(e) **Advocacy and monitoring.** OCA advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the services described in Section 71(h) of this Subchapter, advocacy and monitoring activities on behalf of each client include:

(1) verifying Form DDS-34, Residential Pre-Service Checklist, has been completed and everything on the checklist is in place prior to the resident moving out of the facility;

(2) a home visit with the client within 30 calendar days of the client's discharge from the facility;

(3) verifying Form DDS-34 has been completed prior to any subsequent changes in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;

(4) a face-to-face visit with the client at least quarterly and more frequently as indicated, which includes:

(A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is present in the home; ■ 1 and

(B) visits with the client outside the home setting at least twice a year, every five to seven months; ■ 2

(5) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;

(6) completion of a service review twice a year, every five to seven months; ■ 2

(7) in connection with each service review, verifying that direct contact staff have completed required training;

(8) participating as a member of a resident's personal support team;

(9) attending annual individual plan (IP) meetings, interim meetings, and follow-up planning meetings;

(10) attending emergency team meetings;

(11) attending other team meetings when significant issues are being addressed, including when a rights restriction or an intrusive behavior intervention strategy is

contemplated or to be recommended;

(12) attending guardianship assessment meetings of the client's team;

(13) attending other team meetings at the request of the client, guardian, or involved family or friend;

(14) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;

(15) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;

(16) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; Adult Protective Services (APS) and OCA investigation findings; and behavior data collection forms;

(17) attending Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;

(18) attending Death Review meetings held pursuant to OAC 340:100-3-35;

(19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;

(20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees and does not exceed 120 degrees when a tank device is used; and

(21) at least twice a year, every five to seven months, verifying that appropriate records are kept with regard to an individual's personal finances.

INSTRUCTIONS TO STAFF

1. Client contacts. Quarterly visits are made with each individual represented with a minimum of two home visits each year. In exceptional circumstances, the OCA advocate can forego a quarterly visit with a particular individual with prior approval of the advocate's supervisor provided:

(1) the advocate documents in a contact sheet the approval and the reason it was given; and

(2) at least semi-annual visits are made with the individual.

- 2. Service reviews. An advocate completes a service review every five to seven months for each client. Sources of information for completing the service review include a home visit, the home record, observations, incident reports, verbal accounts by clients and persons involved in their lives, and other documentation since the last service review. After filling out a service review on the database, the advocate fills out a contact sheet on the database with regard to the home visit and service review. The electronic number assigned to a service review is entered on the contact sheet in the appropriate box in the upper right-hand corner of the contact sheet screen. A completed service review is entered on the database within five work days of the home visit.**

340:2-3-74. Advocacy services for Hissom class members

(a) **Application.** This Section describes Office of Client Advocacy's (OCA's) advocacy services for Hissom class members who reside in Oklahoma. Advocacy services are provided to Hissom class members consistent with Section 71 of this Subchapter. Orders of the United States District Court for the Northern District of Oklahoma in *Homeward Bound et al. vs. The Hissom Memorial Center, et al.*, Case No. 85-C-437-E, require the Oklahoma Department of Human Services (OKDHS) and OCA to provide independent advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members. This includes but is not limited to:

(1) independently advocating for class members rights and interests regarding: their daily lives, proposed movements, medical and behavioral emergencies including hospitalizations, appropriate consents, their financial interests, and meetings held on their behalf;

(2) appealing disagreements with a class member's individual plan through OKDHS grievance procedures, Sections 45, 46, and 52 of this Subchapter; and

(3) referral to protection and advocacy agencies in Oklahoma to obtain legal counsel and legal advocacy services.

(b) **Assignment of advocate.** OCA assigns an advocate to each Hissom class member living in Oklahoma. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee. ■ 1 & 2

(c) **Team membership.** As a representative of a Hissom class member living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's Developmental Disability Services Division (DDSD) case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures the client has a current guardianship assessment and attends guardianship assessment meetings. If a client with a full guardianship has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to limit or terminate the guardianship. If the current guardianship assessment of a client

who does not have a guardian recommends a guardian, volunteer advocate, or both, the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. This includes encouraging the development of friends in the community who might become a guardian or volunteer advocate for the client. The OCA advocate monitors the implementation of the recommendations in the guardianship assessment and advocates for their timely achievement. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to appoint a guardian.

(e) Advocacy and monitoring services for class members in residential community settings. OCA advocates provide advocacy and monitoring to class members living in community residential settings, including group homes, to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the activities described in Section 71(h) of this Subchapter, advocacy and monitoring activities on behalf of each client include:

- (1) verifying a Form DDS-34, Residential Pre-service Checklist, is completed prior to any change in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;
- (2) a face-to-face visit with the client at least quarterly and more frequently as indicated, including:
 - (A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is at home; and
 - (B) visits with the client outside the home setting at least twice a year, every five to seven months; ■ 3
- (3) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;
- (4) completion of a service review twice a year, every five to seven months; ■ 4
- (5) in connection with each service review, verifying that direct contact staff have completed required training;
- (6) participating as a member of a resident's personal support team;
- (7) attending annual individual plan (IP) meetings, interim meetings, and follow-up planning meetings;

- (8) attending emergency team meetings;
- (9) attending other team meetings when significant issues are addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or recommended;
- (10) attending guardianship assessment meetings of the client's team;
- (11) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (12) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;
- (13) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;
- (14) prior to and during a hospitalization, advocating for the provision of adequate staff to be present in the hospital with the client as circumstances warrant;
- (15) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; behavior data collection forms; and Adult Protective Services (APS) and OCA investigation findings;
- (16) attending Behavior Review Committee (BRC) and provider and Human Rights Committee (HRC) meetings as required or indicated;
- (17) attending Death Reviews conducted in accordance with OAC 340:100-3-35;
- (18) communicating to the client, the client's guardian, and the client's family as appropriate the final finding of an OCA investigation in which the client was named as an alleged victim;
- (19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;
- (20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees, and does not exceed 120 degrees when a tank device is used;
- (21) at least twice a year, every five to seven months, verifying that appropriate

records are being kept with regard to an individual's personal finances; and

(22) annually provide each client or guardian a copy of Form OCA-GR-3A, Notice of Grievance Rights: Hissom Class Members.

(f) Advocacy services for Hissom class members in a private intermediate care facility for the mentally retarded (ICF/MR). Advocacy and monitoring services for class members who reside in a private ICF/MR in Oklahoma are contained in this subsection.

(1) The assigned OCA advocate personally visits a client living in a private ICF/MR at least semi-annually, and more frequently as warranted.

(2) The OCA advocate maintains a helping relationship with the client, assessing the realization of desired and targeted outcomes, and initiating change through referral or grievance as needed. During contacts with the client, the advocate inquires about individual satisfaction with current supports and provides information regarding options available to clients for community supports.

(3) The OCA advocate annually contacts the guardian of the client if one has been appointed. The OCA advocate also contacts the guardian in response to an expression by the client of dissatisfaction with the current residential arrangements. These contacts reaffirm the availability of service options to clients for support in community settings. Contacts with the guardian occur in person, by phone or by mail as the circumstances warrant.

(4) The OCA advocate contacts the private ICF/MR case manager, generally a Qualified Mental Retardation Professional, responsible for yearly care planning for the client. The advocate informs the facility case manager of the advocate's intent to attend yearly planning meetings. The advocate asks to be notified in advance of yearly planning meetings and emergency meetings. The advocate checks periodically to ensure meetings have not been held without notice to the advocate.

(5) The OCA advocate participates in annual planning meetings at the private ICF/MR. The advocate provides advocacy assistance regarding expressed desires of the individual. The advocate brings to the attention of the care team concerns expressed by the client or guardian. The advocate participates in interim meetings addressing any significant change in residence, work, health, or important relationships.

(6) The OCA advocate develops a working knowledge of the facility's grievance procedure as well as other problem resolution processes and resources for change,

for example, the Long-Term Care Ombudsman Program and licensing agencies. The advocate uses these services, either directly or through referral, as needed for the benefit of the individual.

(7) The OCA advocate assesses the welfare of the client and determines if advocacy assistance is needed which OCA can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. This includes contacting the OKDHS Aging Services Division, long-term care ombudsman. The advocate also informs the Long-Term Care Ombudsman Office of concerns involving non-clients living in an ICF/MR which come to the attention of the OCA advocate.

(8) Service reviews are not completed.

(9) The ICF/MR case manager is responsible for needed assessments, including the guardianship assessment. The DDS case manager can assist during the guardianship assessment. The OCA advocate requests a guardianship assessment on behalf of the client when there has been a substantial change in circumstances regarding the individual's need for a guardian.

(10) The OCA advocate provides information and encouragement to consider community residential settings.

(g) **Advocacy services for Hissom class members who are in custody.** Advocacy and monitoring services for class members who are in custody of the Department of Corrections or a county sheriff, except those who are detained pre-trial in a facility, are contained in this subsection. The assigned OCA advocate contacts the client at least semi-annually. ■ 5 The advocate assesses the welfare of the client and determines if advocacy assistance is needed that the advocate can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. ■ 6 Advocacy assistance is provided with regard to enforcing the rights of clients under the Americans with Disabilities Act and other state and federal laws to the extent they are applicable to persons who are in custody. ■ 7 When the client has less than a year remaining to serve in custody, the OCA advocate provides advocacy assistance with the DDS case manager to commence transition planning. The advocate participates in and monitors transition planning, representing the client's interests. ■ 8

(h) **Services for Hissom class members who decline DDS services.** Pursuant to OAC 340:100-3-11, class members and their legal representatives have the right to refuse services from OKDHS. ■ 9 The OCA advocate for a class member who has declined DDS services, contacts the individual periodically and remains available to

assist with advocacy regarding non-specialized assistance when desired by the individual.

INSTRUCTIONS TO STAFF

1. **Advocate caseloads.** Each advocate is assigned no more than 50 clients, including Hissom class members and other Developmental Disability Services Division (DDSD) clients living in community residential settings.
2. **Changes in the assigned Office of Client Advocacy (OCA) advocate.** OCA considers requests to change the assigned advocate. All requests by a client or the client's representative for a change in assigned advocate are considered and responded to appropriately. Requests for an advocate of a particular gender or other characteristic are considered in a manner which complies with all federal and state laws prohibiting discrimination on the basis of sex, race, age, national origin, religion, disability, or other protected classes.
3. **Client contacts.** Quarterly visits are made with each client with a minimum of two home visits each year. In exceptional circumstances, the OCA advocate can forego a quarterly visit with a particular client with prior approval of the advocate's supervisor provided:
 - (1) the advocate documents in a contact sheet the approval and the reason it was given; and
 - (2) at least semi-annual visits are made with the client.
4. **Service reviews.** An advocate completes a service review every five to seven months for each client. Sources of information for completing the service review include a home visit, the home record, observations, incident reports, verbal accounts by clients and persons involved in their lives, and other documentation since the last service review. After filling out a service review on the database, the advocate fills out a contact sheet on the database with regard to the home visit and service review. The electronic number assigned to a service review is entered on the contact sheet in the appropriate box in the upper right-hand corner of the contact sheet screen. A completed service review is entered on the database within five working days of the home visit.
5. **The OCA advocate becomes familiar with and observes the rules and regulations in effect at the facility where the client is in custody, especially**

regulations regarding what items it is permissible to give to or receive from inmates in that facility. The advocate does not facilitate on behalf of a client anything facility rules prohibit inmates to do. In some facilities, stamps, pens, and paper clips are contraband items, and inmates are not allowed to communicate in writing with each other.

- 6.** This can include contacting the prison case manager assigned to the client to ensure the facility is aware of the client's abilities and limitations which may be relevant to the individual's classification, safety, and participation in vocational and other programs in prison.
- 7.** The OCA advocate provides information to the client's attorney and other officials, including parole officers, that is relevant to the client's conviction, sentence, appeal, prison classification, and assignments, living, work, education, within the prison facility. This includes general information regarding the client's particular developmental disabilities, for example, the potential for impaired understanding of consequences, vulnerability to exploitation, and learning challenges. The advocate obtains written consent of the client and/or guardian before releasing confidential information about the client.
- 8.** In accordance with OAC 340:100-3-11, when services are refused, the client and the client's legal representative(s) are advised of any risks accompanying the decision to refuse services, and are informed of the fair hearing process. The policy also requires teams to engage in and document consideration and attempts to initiate alternatives to resolving the concerns expressed by the client, legal representative, or both. Appropriate legal resolutions are sought when it is determined that the exercise of the right to refuse services by an adult client, who has not been determined incapacitated to act on his or her own behalf, presents a risk to the individual as defined by Oklahoma statutes.
- 9.** Persons who are in custody are deemed to not be waiver recipients while in custody. Hence, assessments such as the guardianship assessment are not required. However, it is appropriate for the advocate to request assessments be completed as part of the transition process when the client is close to discharge from custody.