TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:2-3-2; 2-3-36; 2-3-45 through 2-3-46; and 2-3-50.

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

OAC 340:2-3-2 is revised to add financial neglect as a category of maltreatment.

OAC 340:2-3-36 is revised to provide a copy of the investigative report to the guardianship court when maltreatment by a guardian is confirmed.

OAC 340:2-3-45 is revised to: (1) clarify how the Oklahoma Department of Human Services (OKDHS) local grievance coordinators receive grievance forms; and (2) clarify when a grievance is timely if mediation through Oklahoma Commission on Children and Youth (OCCY) has been requested.

OAC 340:2-3-46 is revised to: (1) clarify when a state office administrator's response to a grievance is sent to the Office of Client Advocacy (OCA); and (2) permit the advocate general's designee to receive a contested grievance transmittal.

OAC 340:2-3-50 is revised to clarify language.

Original signed on 4-2-08

Mark L. Jones, Advocate General
Office of Client Advocacy

Sharon Neuwald, Coordinator
Office of Legislative Relations and Policy

WF # 08-03 (NAP)
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 an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS 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, OKDHS 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, OKDHS: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 405-521-4326.

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340:2-3-2. Definitions

Revised 7-1-08

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

"Abuse" means, with regard to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) 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; and

(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.

"Caretaker misconduct":

(A) means an act or omission that:

   (i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;

   (ii) is not found to be abuse or neglect; and

   (iii) results in or creates the risk of harm to a minor or vulnerable adult.

(B) includes, but is not limited to:

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

(iii) unintentionally causing mental anguish;

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

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

"Case manager" means the person assigned by DDSD 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.

"Financial neglect" with regard to vulnerable adults, means financial neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.  ■ 4

"Foster care" or "foster care services" means continuous 24-hour care and
supportive services provided for an individual 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 another individual.

"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;

(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.

"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 1430.2 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, or burn), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

"Neglect" means, 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;

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

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

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

"OJA" means the Oklahoma Office of Juvenile Affairs.

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

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

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

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

"Referring party" means the individual who informs OCA verbally or in writing that an incident occurred.

"Reporting party" means the individual who initially tells someone verbally or in writing that an incident occurred.

"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.

"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, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third
degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that have no clear, known explanation.

"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. ■ 11

"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. ■ 12

"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; ■ 5

(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, but have no clear, known explanation.

(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. ■ 13

"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.  ■ 14

"Vulnerable adult" means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.  ■ 15

"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 340:2-3-2

Revised 7-1-08

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. The definition of financial neglect in Section 10-103(10) of Title 43A of the Oklahoma Statutes is: "Financial neglect" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to: a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult; b. refusing to pay for necessities or utilities in a timely manner; or c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

5. "Accident" means an event that could not be anticipated or prevented through the exercise of reasonable care.

6. 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.

7. Neglect can result from lack of supervision appropriate under the circumstances and failure to report client maltreatment pursuant to OAC 340:2-3-33.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.
340:2-3-36. Investigation procedures

Revised 7-1-08

(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 or designee 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 15IV005E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused Caretakers, Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees, or a substantially similar provider or agency 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 06PE059E, Rights and Responsibilities of 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 06PE059E, 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.

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 or designee. ■ 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). In general, the investigator discloses only the nature of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential
accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond.

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

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

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

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

(j) **Exit notice.** Within 30 calendar days of assignment of a referral to be investigated,
the assigned OCA investigator contacts by e-mail the applicable administrator or
designee, or OKDHS long-term care nurse, whichever is applicable, when the
information gathering portion of the investigative process is completed. The
investigator informs the administrator of any areas of concern identified and that a
written report will be prepared with the final finding. Preliminary findings are not
required.

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

(13) a list of attachments to the report that are provided upon request; 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 greater weight of the evidence standard. The finding options are:

1) "confirmed" means that the greater weight of the available evidence establishes that the alleged maltreatment occurred; ■ 9

2) "not confirmed" means the greater weight of the available evidence indicates that the alleged maltreatment did not occur; or

3) "ruled out" means no evidence was discovered that indicates the alleged maltreatment occurred.

4) "defer" means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

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

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

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

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

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

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

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

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

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

(1) 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 approved, an e-mail notice of the areas of concern in the report is sent to the administrator, 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 DDSD director or the APS programs manager, whichever is applicable, and 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 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 DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working days, the applicable division director notifies the advocate general in writing of:

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

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

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

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

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

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

(1) Within 60 calendar days of receipt of a final OCA investigation report, the DDSD director 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.

(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 340:2-3-36

Revised 6-11-06

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 to the conditions listed in (A) through (H) of this Instruction.

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

(B) The attorney and the person being interviewed understand the attorney does not say anything during the interview, other than request a break to consult privately with the person being interviewed or as otherwise provided in this Instruction to Staff.
(C) The attorney does not make an opening statement or closing argument, and does not ask questions, or make any suggestions, directly or indirectly, about how the interviewee should answer a question other than indicate when the attorney is advising the interviewee to decline to answer the question based on the Fifth Amendment or a recognized privilege.

(D) The attorney does not record the interview by audio or videotape, and may not obtain a copy of the tape recording made by the investigator except pursuant to Oklahoma laws relating to the confidentiality of OCA investigation records.

(E) The attorney acknowledges on the record at the beginning of the interview that anything said during the interview is protected by federal and state law relating to confidentiality, and that the attorney will not violate the confidentiality of communications during the interview.

(F) The attorney is not provided discovery in connection with the interview; in other words, the attorney will not be supplied with any information, such as documents and reports relating to the case.

(G) The request to have an attorney present does not delay the interview absent good cause. In general, interviews take place within seven to ten days after the investigator contacts the interviewee to schedule the interview. The attorney needs to be able to accommodate the investigator's schedule.

(H) At any time during the interview, the interviewee or the attorney can ask to be excused to consult privately.

3. Injuries. If the nature and circumstances of the injury create a concern for the continuing safety of a minor or vulnerable adult, the investigator promptly informs a person with authority to resolve the matter. In cases involving a Hissom class member, the investigator contacts the DDSD case manager or other DDSD staff, or the OCA advocate and other OCA staff, and remains on the scene as indicated. In other cases, the investigator contacts the OCA programs manager for investigations or an OCA supervisor for guidance. Law enforcement is contacted when warranted.

4. Emergency situations. If during the course of an investigation the OCA investigator becomes aware of facts creating a concern for the continuing
safety of an alleged victim, the investigator takes appropriate action warranted by the situation. In cases involving a Hissom class member or DDSD client, the investigator contacts the DDSD case manager or other DDSD staff, the OCA advocate, and other OCA staff as warranted. In other cases, the investigator contacts the OCA investigations programs manager or an OCA supervisor for guidance. The investigator contacts law enforcement when warranted. The investigator remains on the scene as needed to ensure the protection and safety of the client.

5. Tape recordings. In the written investigative report, the investigation clearly identifies any persons, other than the investigator and the interviewee, present in the interview, and explains their purpose for attending. During each interview, the investigator explains to the interviewee on tape that the interview is being tape recorded. Investigators include in their written report the time, date, and location of each interview conducted.

6. If the original allegation was factually inaccurate with regard to date, time, place, or identity of individuals, the report includes the allegation as corrected or expanded as a result of the investigation.

7. During the course of the investigation, when the investigator becomes aware of a significant health or safety issue regarding the alleged victim, the investigator timely informs a person with the authority to resolve the matter. In cases involving Hissom class members, this can include contacting DDSD staff, the OCA advocate assigned to the class member, the advocate’s supervisor, or the OCA community ombuds programs administrator.

8. Review of OCA investigative reports. OCA supervisors monitor timely completion of OCA investigation reports and regularly discuss with each investigator supervised referrals assigned to the investigator that are pending over 30 days. The investigator submits the written report to an OCA supervisor for review. The OCA supervisor reviews the investigative report for completeness, accuracy, appropriate analysis, proper inclusion of areas of concern, timeliness, and acceptable presentation. An investigative report approved by the investigator’s supervisor is reviewed by the advocate general or designee.

9. If the investigator confirms abuse by an accused caretaker and the investigator knows that caretaker is a person responsible for a minor, the investigator makes a referral to Child Welfare, pursuant to Section 7103 of Title 10 of the Oklahoma Statutes, if the circumstances give cause to believe
10. If the evidence is sufficient to confirm maltreatment but the person responsible for the maltreatment cannot be identified by the greater weight 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.
340:2-3-45. Grievance system protocols

Revised 7-1-08

(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) "**Business day**" or "**working day**" means Monday through Friday, not including federal or state holidays.

(4) "**CFSD**" means the Children and Family Services Division of OKDHS.
(5) "Client" means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

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

(7) "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 DDSD clients who are adults, it might be a guardian or the individual support team for the client.

(8) "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.

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

(10) "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.

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

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

(13) "Grievant" means a client or the person who files a grievance on behalf of a
(14) "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.

(15) "OCA grievance liaison" means the individual(s) designated by the advocate general to coordinate and monitor contested grievances, and local grievance programs.

(16) "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.

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

(18) "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 includes:

(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 includes:

(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 in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

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

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

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC
contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form 15GR012E, Notice of Summary Disposition of Grievance – OKDHS County Offices, 15GR013E, Notice of Summary Disposition of Facility Grievance, 15GR014E, Notice of Summary Disposition of Grievance – Developmental Disabilities Services Division (DDSD) Clients, 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services Division (DDSD) Provider Grievance, or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form 15GR001P, Grievance Form, and then dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant along with a copy of the grievance form is sent within three business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. If the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.

(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. There are no time limits for filing grievances on behalf of individuals served by the OKDHS DDSD.

(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 that 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 15GR001P 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. The LGC sends a copy of the Form 15GR001P and a copy of the applicable Notice of Summary Disposition to the advocate general, or designee, for review.

(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 DDSD 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 by completing Form 15GR021E, Designation of Local Grievance Coordinator. Facilities and Provider
Agencies, and submitting it to the Office of Client Advocacy. 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 DDSD area office;

(iii) functions impartially and independently in the processing of grievances;

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

(v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course; and

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

(B) Each facility and provider subject to this Part, each OKDHS county office, and each 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 15GR017E, Grievance Poster - Child Welfare Contracted Facilities, Form 15GR018E, Grievance Poster- Oklahoma Department of Human Services (OKDHS) County Offices, Form 15GR019E, Grievance Poster - Developmental Disabilities Services Division Providers, or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (OKDHS) Developmental Division Services Division (DDSD) Offices, 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, procedures, forms, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 days of the provider or facility adopting the revised policy.

(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 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, Form 15GR005E, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form 15GR006E, Notice of Grievance Rights - DDSD Service Recipients (General), Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, or Form 15GR008E, 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 15GR001P, 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 for OKDHS order this form from the OKDHS Warehouse. Private provider and facility 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 or any other staff member.

(3) A grievance received on paper other than Form 15GR001P is attached to a Form 15GR001P 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 DDSD 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. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program as provided in Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is then not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the
grievance "administratively resolved" consistent with OAC 340:2-3-45(h). When a foster parent grieves, but has requested mediation of the dispute through OCCY's mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.

(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.

(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 three business days of the grievant's request.

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

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

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

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form 15GR009E, 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 15GR010E, 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. The e-mail address is: *oca.grievances@okdhs.org. When no grievance activity occurred or was pending during a particular fiscal year quarter, the LGC so indicates on Form 15GR010E.

(3) If a grievance becomes moot at any point during the local 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 15GR001P and Form 15GR009E, and sends a copy of Form 15GR001P to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form 15GR001P, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form 15GR001P 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 15GR001P, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form 15GR001P, if the grievance has not been resolved to the grievant's satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) 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 first level respondent may be 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.

(E) For adults receiving services from DDSD, the first level respondent may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches the corresponding Form 15GR001P, 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 15GR002E by completing the second box in the first level section on Form 15GR002E. 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 15GR002E, and the grievance immediately proceeds to the second level of problem resolution.

(5) Within three 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 may meet with the grievant with or without the LGC. If the grievant needs time to decide whether to accept the proposed resolution, the grievant has three business days within which to make a decision. If no decision is communicated to the LGC within three business days, the grievant is deemed to have accepted the proposed resolution. The LGC is responsible for informing grievants that they have three business days in which to accept or to appeal the respondent's proposed resolution.

(6) If the grievant is satisfied with the proposed resolution, the LGC indicates the grievant's acceptance on Form 15GR002E, 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 15GR002E, ensures the corresponding Form 15GR001P 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 may be processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section on Form 15GR002E. 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 15GR002E 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 three 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 three 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 15GR002E, 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 or the target date of the second level proposed resolution, or both, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hissom class members. 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 three 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 liaison 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 liaison 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.*

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 days of their appointments, and annually thereafter.
340:2-3-46. Contested grievances appealed to the state office

Revised 7-1-08

(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 three business days of being informed of that request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance liaison, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding Form 15GR001P, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) Documentation requirements. When Form 15GR002E is submitted to OCA, it has attached:

   (1) the corresponding Form 15GR001P;

   (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and

   (3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.

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

(f) Rejected grievances. If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), OCA returns the grievance to the
LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within three 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 15GR011E, 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 or by the due date on Form 15GR011E. The advocate general or designee 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 15GR011E. A copy is sent to the advocate general or designee. The state office administrator attaches his or her response to Form 15GR011E 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 liaison 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 liaison 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 three 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 15GR011E and returns it to the OCA grievance liaison within three business days. Upon receipt by OCA of Form 15GR011E, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.
340:2-3-50. Grievances of foster parents

Revised 7-1-08

(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 15GR008E, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) worker assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent.

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

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

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

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

(2) Summary dispositions. If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (G), the LGC informs the foster parent why the grievance is not being processed, using Form 15GR016E, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

(A) a decision of a court;
(B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;

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

(D) disputes with other foster parents;

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

(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; and

(G) complaint alleges retaliation by an employee of OKDHS, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

3) Allegations of retaliation. Allegations of retaliation or discrimination, as those terms are defined in OAC 340:2-3-38(b), are processed in accordance with that Section.

4) Allegations of discrimination. Allegations of discrimination based on sex, age, national origin, religion, color or disability, are referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the complaint to the OKDHS civil rights administrator, and so informs the foster parent using Form 15GR016E.

(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.