

NEW YORK STATE
 DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243



BARBARA B. BLUM
 Commissioner

[An Administrative Directive is a written communication to local Social Services Districts providing directions to be followed in the administration of public assistance and care programs.]

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL NO.: 82 ADM-16
 [Services]

TO: Commissioners of Social Services
 Directors of Authorized Agencies

SUBJECT: Implementation of Departmental Regulation
 441.18 on Children's Privacy Rights

DATE: April 27, 1982

SUGGESTED DISTRIBUTION: Authorized Agency Staff
 Child Welfare Staff

CONTACT PERSON: Any questions concerning this release should be forwarded to the appropriate Family and Children Service Regional Office Director: Frederic Cantlo, Metropolitan Regional Office at 1-800-342-3715, extension 131-3484; John O'Connor, Eastern Regional Office at 1-800-342-3715, extension 31049; or John Gaynor, Western Regional Office at 716-454-4272.

I. Purpose

The purpose of this directive is to advise authorized agencies, which include local social service districts, of the provisions of Section 441.18 of Department Regulations which address children's privacy rights when they are in the care of an authorized agency.

II. Background

Proposed draft regulations were made available for public comment in December of 1980. Extensive comments were received which advocated both that the proposed regulations, either in part or whole, were too restrictive and impractical to be effectively carried out or contrastingly, that the regulations did not go far enough in safeguarding children's rights. After careful consideration of the comments received and considerable discussion with several of the commenters, revisions were completed

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs. Section 441	Social Services Law and Other Legal References	Bulletin/Chapter Reference	Miscellaneous References

and the regulations were filed on July 8, 1981.

III. Required Action

All authorized child caring agencies, including local social services districts, must comply with the following:

-Advise all relevant staff of the specifics of these new privacy regulations and their responsibilities for ensuring compliance.

-Advise all currently licensed/certified foster parents in writing of the privacy requirements (as contained in Regulation 441.18) for children in care. During the process of certifying new foster parents, these requirements should be discussed in detail.

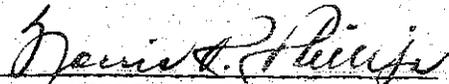
-Review Policy Manuals, required by Section 441.4 of Departmental Regulations, to determine whether their stated policies on Children's Rights include the areas covered by Section 441.18. Where the policy is found to be incomplete or inconsistent with Section 441.18, it must be revised.

-Prior to carrying out unannounced general/partial searches of child care facilities, request prior approval from the Family and Children's Services Regional Office. In emergency situations, when time does not permit receiving prior approval, notification of the search must be given to the Regional Office no later than the first business day following the search.

-Establish a Search Documentation Log and record every search's purpose, outcome and time in it, as well as recording the same information in the child's record.

IV. Effective Date

Section 441.18 of Departmental Regulations became effective July 8, 1981 and a copy is attached for reference.



NORRIS P. PHILLIPS
Deputy Commissioner
Division of Services

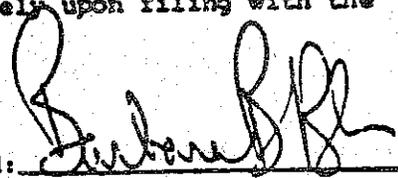
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STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

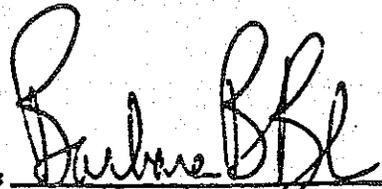
Pursuant to the provisions of Sections 20(3)(d), 34(3)(f), 460 and 462(1) of the Social Services Law, I, Barbara B. Blum Commissioner of Social Services, do hereby add, as hereinafter indicated, Section 441.18 to the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Dated: July 8, 1981

Signed: 
COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on July 8, 1981 adding Section 441.18 of the Official Regulations of the State Department of Social Services, being Title 18 NYCRR, the express terms of which were published in the New York State Register on December 24, 1980.

Dated: July 8, 1981

Signed: 
COMMISSIONER

A new section 441.18 is hereby added to read as follows:

441.18 Children's Privacy Rights.

The provisions contained in this section shall apply unless a condition in a court order provides to the contrary. Such condition shall be documented in the child's record.

(a) Mail

(1) A child in care has an unrestricted right to send mail without prior censorship or prior reading.

(2) A child in care has the right to receive mail without prior reading or prior censorship. However, an authorized child care agency or foster family boarding home may require the child to open the mail in the presence of a staff member or the foster parent if there is reasonable cause to suspect the delivery of contraband (e.g. drugs or weapons).

(3) Nothing contained in paragraphs (1) and (2) of this subdivision shall be construed to permit a child's use of mail for fraudulent, illegal or illicit purposes.

(4) As part of a treatment plan developed or approved

by the local social service district caseworker who has case management responsibility for a child, and in consultation with the authorized agency or foster parent, the authorized child care agency or foster parent may require that a child open mail arriving from a pre-designated person in the presence of a staff member or foster parent. Such a situation might arise when it is anticipated that mail from a parent or other person is likely to cause emotional harm to a child and that such potential harm could be lessened with the presence of a staff member or foster parent. The child shall be informed of this aspect of the treatment plan when it is established and the reason(s) for its implementation.

(b) Telephone.

(1) A child in care shall have the right to receive or refuse any and all calls made to him/her during reasonable hours to be set by the authorized agency or foster parent.

(2) A child in care shall be allowed to call any person of his/her choosing; however, the time, duration and cost of such calls may be restricted by the limits of the authorized agency's or ~~foster's~~

* foster *

family boarding home's policies for access and utilization of the telephone.

(3) Nothing contained in paragraphs (1) and (2) of this subdivision shall be construed to permit a child's use of the telephone for fraudulent, illegal or illicit purposes.

(4) Except at the child's request, neither agency staff nor foster parents shall listen in on a child's phone conversation. An area which affords the child a reasonable degree of privacy shall be provided for the purpose of receiving and initiating phone calls whenever it is physically possible to provide such an area. It is not, however, required that an authorized agency or foster home have a telephone, except as required by section 442.14, nor that it have any specific policy for its utilization beyond what is contained in this subdivision.

(c) Access to Attorney and Clergy.

Nothing contained in subdivisions (a) or (b) of this section shall be construed to impede access of a child to either his attorney or his clergyman.

(d) Searches.

(1) Searches of a child's property may be made only when there is reasonable cause to suspect that the child has in his possession one or more of the following: an item(s) which does not belong to him; items the possession of which by either an adult and/or a child is a crime or offense (e.g. weapons, firearms, controlled substances and marijuana) or articles which the authorized agency or foster parent, subject to the supervision of the authorized agency, may consider to be dangerous or harmful to the child, other children in the home or agency, or to the physical structure. A search may include having a child empty out his/her pockets when there is reasonable cause to believe that a stolen or illegal object may be concealed there.

(2) Only in instances when the conditions of paragraph (1) of this subdivision are present and, in addition, there is reasonable cause to believe that the child or other persons in the facility or home are in imminent danger of serious harm due to that child's intent to use or distribute an object(s) or substance(s) in his/her possession may the child's person be searched. In such situations a search may include

asking a child to empty such personal effects as a wallet or purse; removing outer garments such as coat, hat and shoes, garments may be searched carefully (frisked) including pant cuffs, sleeve cuffs and waist bands; and a visual inspection of the mouth, nose and ears may be done. This type of search should be done by a person of the same sex as the child. Strip searches are not permissible.

(3) Only when it is perceived that the safety of children is imperiled, as a result of suspicions that weapons or dangerous articles may be widespread in the facility may an unannounced general search be undertaken of a portion or of the entire facility. Such searches require prior approval from the Department's Regional Office Director or his/her designee. If time does not permit receiving such prior approval, notification must be provided to the Department at the earliest possible time, but not later than the first business day following the day the search takes place.

(4) Every possible effort must be made to obtain the child's physical presence whenever his room, locker, or possessions are to be searched. If this is impossible because the child is not present

and there is reasonable cause to believe that a person(s) at the facility or home will be endangered by awaiting the child's return, the authorized agency or foster parent shall notify the child at the earliest possible time that a search has been made and whether any material has been confiscated.

(5) Except in foster family boarding homes, every search must be authorized by the director of the authorized agency or the director's designee. Every search must have an explanation of the purpose and the results of the search documented both in the child's record and in a separate search documentation log.

(Deleted material brackets; new material underlined).

