

# Applying the Reasonable and Prudent Parent Standard: “Know” Before You Say “No”

## Introduction

On September 29, 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (the Act) into law, which amended various provisions of Title IV-E of the Social Security Act. One of the primary purposes of the Act is to improve the safety, permanency, and well-being outcomes of children, youth and young adults<sup>1</sup> involved with the child welfare system. Section 111 of the Act, *Supporting Normalcy for Children in Foster Care*, seeks to advance the well-being of children, youth and young adults by requiring states to support normative experiences for children through the implementation of the reasonable and prudent parent standard (the standard). The standard allows for a caregiver<sup>2</sup> to make parental decisions that maintain the health, safety, and best interest of the child, as well as decisions about the child’s participation in extracurricular, enrichment, cultural and social activities that are age and developmentally appropriate, in a way that protects the child while allowing for normative experiences.<sup>3</sup>

New York State amended state statute and OCFS regulations to implement the Act. These amendments took effect on September 1, 2015.

“Know” Before You Say “No” is intended to answer frequently asked questions that may assist in applying the standard. Caseworkers, case planners, case managers, foster parents, and congregate care staff are encouraged to refer to this Q&A tool when considering a child’s participation in normative experiences.

For additional information pertaining to the application of the standard and population considerations, refer to OCFS regulation 18 NYCRR 441.25 and 15-OCFS-ADM-21.

## Frequently Asked Questions and Answers

### ***If the birth/adoptive parent, guardian or prior caretaker disagrees with a decision, is that the ultimate decision as to whether a child can participate in a normative experience?***

Where appropriate, the input and position of the birth/adoptive parent, guardian or prior caretaker should be considered in the decision making process. This input is dependent on the individual situation. In cases where parental rights have been surrendered or terminated or there are safety concerns or the parties are not available, such consultation or discussion

<sup>1</sup> For the purpose of this document, children, youth, and young adults in foster care will be referred to as “child.”

<sup>2</sup> The Office of Children and Family regulation 18 NYCRR 441.25 defines “caregiver” as the foster parent with whom the child in foster care has been placed; or a designated employee of a child care facility, including the institution, group residence, group home, agency boarding home or supervised independent living program in which the child has been placed.

<sup>3</sup> Normative experiences are age and developmentally appropriate activities and opportunities that promote the healthy cognitive, social, emotional, physical, and educational development of children, youth, and young adults, regardless of their involvement in the child welfare system.

should not be a part of the decision-making process. However, if the caregiver, case worker, case planner, case manager, and child (if age and developmentally appropriate) determine that an alternative decision is appropriate and in the best interest of the child, then the caregiver and child may move forward with that alternative decision. The determination and the basis for such determination must be documented in the child's case record.

***If the child gets hurt while participating in an activity that a caregiver has approved, is a caregiver liable?***

In New York State, where a foster child is injured as a result of an activity carried out as part of the standard, the New York State common law standards for negligence, intentional wrongdoing and gross negligence, as evolved over the years in the case law of this state, would apply. There is no separate statutory liability standard applicable to caregivers on the subject.

However, the following guidance is offered on how a caregiver can take steps to limit potential exposure to liability and, even more importantly, to limit the potential for injury to a child in foster care.

- Inquire about and be familiar with OCFS policies that relate to the application of the reasonable and prudent parent standard;
- Follow the guidance provided by the applicable LDSS concerning the particular child;
- Participate in available trainings on the subject of reasonable and prudent parenting;
- If there is uncertainty regarding a particular issue concerning a child's activities, foster parents should consult with the child's case worker and facility staff should consult with appropriate supervisory staff on such decisions regarding the child;
- Be aware of the positions and wishes of the birth parents, guardians or prior caretakers, and consult with them as appropriate;
- Discuss the activity with the child and if the activity occurs, receive feedback from the child and monitor for changes in child's behavior, health or other functions;
- Record all communications relating to the consideration and application of the reasonable and prudent parent standard in relation to a particular child;
- Staff in congregate care facilities applying the standard should be familiar with the foster child's case record, including, but not limited to, relevant health, behavioral and clinical information;
- Be aware of medical reports or court orders that limit activities and apply the reasonable and prudent parent standard in a manner consistent with such report or order;
- For foster parents, receive and be familiar with placement information that must be provided to the foster parent regarding a foster child placed in the foster home as required by OCFS regulation.<sup>4</sup>
- Make sure that foster children receive medical checkups as prescribed by OCFS regulations and medical directives;
- Be aware of and comply with the child's school policies on athletic injuries.

---

<sup>4</sup> Office of Children and Family Services. *New York State Foster Parent Manual*, p.13.  
<http://ocfs.ny.gov/main/publications/Pub5011.pdf>

Additionally, caregivers are encouraged to refer to 15-OCFS-ADM-21 for guidance on how a caregiver can take steps to limit potential exposure to liability and, even more importantly, limit the potential for injury to a child in foster care.

Additionally, caregivers, birth/adoptive parents, guardians or prior caretakers, case workers, case planner, case managers, and children (if age and developmentally appropriate) are encouraged to utilize all of the attachments included with 15-OCFS-ADM-21 for guidance on commonly asked questions and considerations that should be explored prior to making a decision.

***Is a congregate care staff person required to contact the Justice Center when a child is injured while participating in an approved activity?***

Depending on the severity of the injury, congregate care staff may be required to contact the Justice Center if a child is injured while participating in an approved activity.

***Is a caregiver allowed to sign permission slips for school activities (e.g., field trip, sports team)?***

The first consideration is to be aware of the policy of the school district as to who may sign the permission slip on behalf of the child. If the school district allows caregivers to sign, subject to the considerations referenced in the next paragraph, a caregiver may sign permission slips allowing a child to participate in school activities. For example, if the child is attending a school trip to a museum, the caregiver may move forward with signing the permission slip without seeking out the permission of the birth/adoptive parent, guardian or prior caretaker. If an activity involves travel outside of the county or state, the caregiver may grant permission but must notify the case worker, case planner, or case manager prior to the event occurring. If the school activity involves travel outside of the country, the local department of social services commissioner or designee must be notified prior to the event occurring and must consent.

The caregiver must apply the reasonable and prudent parent standard when determining participation in the activity, including but not limited to, assessing the potential risk for injury from the activity, ability to comply with the rules set forth by the schools as it pertains to medical restrictions, understand the child's physical and/or cognitive ability, and confirm that participation in such activity does not conflict with any mandatory court appearance, court ordered visitation, or violate the child's safety plan. Caregivers should refer to Attachment B: Applying the Reasonable and Prudent Parent Standard: Caregiver Considerations when determining whether a child may participate in an activity. Additionally, if appropriate, the birth/adoptive parent, guardian or prior caretaker, and child (if age and developmentally appropriate), should be engaged prior to making a decision.

***Is a caregiver allowed to enroll and sign permission slips for participation in a sport or team activity (e.g., dance, cheerleading, drama club) outside of the school?***

The first consideration is who is authorized to enroll or sign permission slips as established by the organization that is operating or overseeing the sport or team activity. If allowed by the rules of the particular activity, a caregiver may enroll and sign permission slips for a child to participate in an activity outside of the school.

When determining whether to allow the child to participate in the activity, the caregiver must apply the reasonable and prudent parent standard when determining participation in the activity, including but not limited to, assessing the potential risk for injury from the activity, ability to comply with the rules set forth by the activity as it pertains to medical restrictions, understand the child's physical and/or cognitive ability, and confirm that participation in such activity does not conflict with any mandatory court appearance, court ordered visitation, or violate the child's safety plan. Additionally, the caregiver should, where appropriate, engage the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) in determining the child's participation in the activity. When making a decision, all should consider how participation in this activity will continue should the child is returned to the birth/adoptive parent, guardian or prior caretaker.

Caregivers should refer to 15-OCFS-ADM-21, Attachment B: *Applying the Reasonable and Prudent Parent Standard: Caregiver Considerations* when determining whether a child may participate in an activity.

***Is a caregiver allowed to permit a child to travel with their team for sports or other activities (e.g., dance, cheerleading, theatre)?***

Prior to consenting to such travel, the caregiver must apply the reasonable and prudent parent standard, including, where appropriate, engaging the birth/adoptive parent, guardian or relative caretaker and child (if age appropriate) in determining the child's participation in the activity. For travel outside of the county or state, the case worker, case planner, or case manager must be notified prior to the event occurring. If the activity involves travel outside of the country, the caregiver should confirm that such travel does not conflict with court orders and consider the child's medical needs and behavioral history. In addition, the local department of social services commissioner or designee must be notified prior to the event occurring and consent to such travel.

For travel outside of the country, caregivers should consider if the child has relatives in the country of travel as well as any potential risks pertaining to child abduction. Caregivers are encouraged to refer to the U.S. Department of State International Parent Child Abduction website for more information:

<http://travel.state.gov/content/childabduction/english/preventing/tips.html>

Any concerns regarding travel outside of the country should be discussed with the case worker, case planner, case manager and, as appropriate, the local department of social services commissioner or voluntary agency executive director.

***Is a child in foster care allowed to travel out of county, state, and/or country with a caregiver?***

The caregiver must apply the reasonable and prudent parent standard for travel out of county, state and/or country with the child. This includes, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) in determining the child's ability to travel. The caregiver should consider at minimum the length of time in which the child has been with the caregiver/family, the child's comfort in traveling with the caregiver/family, and if the travel will conflict with any mandatory court appearances and/or court ordered visitations. For travel outside of the county or state, the case worker, case planner, case manager must be notified prior to the event occurring. If the activity involves travel outside of the country, the caregiver should confirm that such travel does not conflict with court orders and consider the child's medical needs and behavioral history. In addition, the local department of social services commissioner or designee must be notified prior to the event occurring and consent to such travel.

For travel outside of the country, caregivers should consider if the child has relatives in the country of travel and any potential risks pertaining to child abduction. Caregivers are encouraged to refer to the U.S. Department of State International Parent Child Abduction website <http://travel.state.gov/content/childabduction/english/preventing/tips.html>. Any concerns regarding travel outside of the country should be discussed with the case worker, case planner, case manager and, as appropriate, the local department of social services commissioner or voluntary agency executive director.

***How are the costs associated with various activities to be paid?***

The rate received by the foster boarding home or congregate care facility is expected to cover most of the expenses involved with the care of the child, including most routine activity expenses. Some unusual costs may be allowable as special payments subject to the approval of the applicable LDSS.<sup>5</sup> For these more expensive activities, foster parents should work with their LDSS.

***Are background checks/clearances necessary in order for a child to attend a party (e.g., birthday, graduation), visit with a friend, or stay overnight at a friend's house?***

Background checks/clearances are not legally necessary in order for the child to attend a party, visit with a friend, or stay overnight at a friend's house. SCR clearances under Social Services Law (SSL) §424-a and criminal history checks under SSL §378-a are not authorized for these

---

<sup>5</sup> 18 NYCRR 427.3

## Attachment C

individuals. In all instances, the caregiver must apply the reasonable and prudent parent standard.

For older children in foster care under the age of 18 who seek to attend a party unsupervised by the caregiver, the caregiver should consider the child's age and maturity to determine if this is developmentally appropriate, as well as the child's history with responsible behavior. Additional factors to consider include who will be in attendance at the party and where the party will be located. The caregiver should have the contact information of the adult supervising the party.

For visiting with a friend, the caregiver should consider the child's age and maturity, the child's history with responsible behavior, whether the caregiver has met the child's friend, knowledge about the friend (e.g., the friend's positive or negative behavior), contact information for the friend (e.g., home address, cell phone number), and the location in which the child will be visiting the friend.

For an overnight stay at a friend's house, the caregiver should consider the child's age and maturity, the child's history with responsible behavior; the child's mental health history, including any triggers that may endanger the child or others in the host household; meeting in-person with the parents or other responsible adults of the family with whom the child will be staying overnight; determining any other individuals who will be in the home during the overnight stay and ascertaining, to the extent possible, that they will not endanger the child's safety; sharing all emergency contact information with the host family; and, knowing where the child will be sleeping.

### ***Is a child in foster care allowed to access social media (e.g., Facebook, Twitter, Snapchat, Instagram)?***

There is no legal right to access to social media, but it may be allowed on a case by case basis as discussed below.

The caregiver must apply the reasonable and prudent parent standard, including engaging, where appropriate, the birth/adoptive parent, guardian or prior caretaker, and child (if age appropriate), in determining the child's access to social media. The caregiver should consider the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, the child's safety (e.g., whether the child is a victim of sex trafficking), if there is a court order or order of protection that limits who the child may interact with; monitoring the child's social media activity by limiting his or her use of social media to an open or public space, connecting with the child via the online platform, obtaining the child's user information (username and password) for his/her social media account(s); and teaching the child about safe Internet practices, such as not chatting or meeting with strangers and not sharing personal information online (e.g., Social Security number, address).

***Is a child in foster care allowed to have a cell phone?***

While there is no right of a child in foster care to a cell phone, there is also no prohibition against a foster child having one.

The caregiver must apply the reasonable and prudent parent standard in determining whether or not a child is allowed to have a cell phone, including, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate). The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, the child's safety (e.g., the child is a victim of sex trafficking), if the child travels a long distance to/from school, has a part time job, if there is a court order or order of protection that limits who the child may interact with, access to social media via the cell phone, and monitoring text messages.

Regulatory standards relating to the use of telephones by children in foster care are set forth in OCFS regulation 18 NYCRR 441.18(b).

***Is a caregiver allowed to cut or style a child's hair or arrange for someone else to do so?***

A hair style may have cultural significance for the child and/or the child's birth/adoptive parent, guardian prior caretaker or family. Understanding this, a caregiver should not cut or style, or consent to the cutting or styling, of a child's hair without the engagement, if appropriate, of the birth/adoptive parent, guardian or prior caretaker, or familiarity with the cultural norms of the child and/or the child's family. At the time of removal or when completing the initial Family Assessment and Services Plan (FASP), the case worker, case planner, case manager should obtain from the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) information as to how the child's hair should be cut, styled, and maintained. If the child is older and requests that his/her hair be cut or styled differently, the caretaker must apply the reasonable and prudent parent standard, including engaging, if appropriate, the birth/adoptive parent, guardian or prior caretaker, and considering the age and maturity of the child, whether the request is developmentally appropriate, whether there is a medical reason (e.g., lice), and the child's desire for changing the cut/style of his/her hair.

***Can a caregiver determine the child's bedtime and curfew?***

A caregiver must apply the reasonable and prudent parent standard when determining a child's bedtime and curfew. This includes considering the child's age and maturity, the child's history of responsible behavior (e.g., history of curfew violations), the child's safety (e.g., the child is a victim of sex trafficking), and, where appropriate, engaging the birth/adoptive parent, guardian or prior caretaker and child (if age appropriate) when determining the bedtime and/or curfew for a child.

***Is a child in foster care allowed to stay with a babysitter?***

A child in foster care is allowed to stay with a babysitter for a limited time under certain conditions. OCFS regulation, 18 NYCRR 443.3(b)(3) states that foster parents will never leave foster children under the age of 10 alone without competent adult supervision or foster children above that age except as might reasonably be done by a prudent parent in the case of his or her own children. Regardless of the child's age, the reasonable and prudent parent standard must be applied when selecting a babysitter. A caregiver should consider the age and development of the child; the child's mental health history, including any triggers that may endanger the child or others in the household; the child's comfort with the babysitter; the competence and maturity of the babysitter; and the babysitter's experience in caring for children.

A background check/clearance is not legally required for a babysitter. SSL §424-a does not authorize SCR screening, and SSL §378-a does not authorize a criminal history record check of a babysitter.

***Is a child in foster care allowed to attend events without the caregiver's supervision?***

A child in foster care is allowed to attend events without the caregiver's supervision. See the standard set forth above for foster parents stated in 18 NYCRR 443.3(b)(3). The adult providing supervision does not have to be the foster parent or caregiver. For all children, regardless of age, the reasonable and prudent parent standard must be applied to determine if participation in the event is appropriate.

When applying the reasonable and prudent parent standard, the caregiver should consider the age and maturity of the child, the child's history with responsible behavior, whether the activity is developmentally appropriate, the caregiver's familiarity with the child, verifying the contact information (e.g., cell phone number) for the adult who will be supervising the event, traveling with the child to the event to meet face-to-face the person(s) supervising/hosting the event, and knowing the location of the event. Additionally, the caregiver should provide to the child and the adult supervising the event his/her contact information in case of an emergency.

***Is a child in foster care allowed to stay home alone in the foster home for a limited time?***

OCFS regulation 18 NYCRR 443.3(b)(3) states that foster parents will never leave foster children under the age of 10 years without competent adult supervision or foster children above that age except as might reasonably be done by a prudent parent in the case of his or her own children. For a child 10 years of age or older, the caregiver must apply the reasonable and prudent parent standard to determine whether a child is allowed to stay home alone for a limited time. The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, familiarity with the child, and the child's comfort with being home alone.

***Is a child in foster care allowed to babysit?***

A child in foster care may be allowed to babysit, but cannot be required to do so. In determining whether to allow a child in foster care to babysit, the caregiver should consider the age and maturity of the child, the child's history with responsible behavior, any behavioral issues that could put other children at risk of harm, whether it is developmentally appropriate, and the child's comfort with being a babysitter.

***Is the child in foster care allowed to have his/her picture taken for the school yearbook, school and non-school sports team, other extracurricular activities (e.g., dance club, theatre)?***

A child in foster care is allowed to have his/her picture for a school yearbook, school and non-school sports team, and other extracurricular activities, etc. as long as there is no indication that the child is in foster care.

***Is a child in foster care allowed to go to overnight summer camp?***

Permission for a child in foster care to participate in overnight summer camp must be granted by the applicable local department of social services commissioner or designee (18 NYCRR 431.13). Prior to seeking permission, caregivers are encouraged, where appropriate, to engage the birth/adoptive parent, guardian or prior caretaker, and child (if age appropriate) in determining whether a child should participate in overnight summer camp. Caregivers must apply the reasonable and prudent parent standard when considering overnight summer camp, including the child's interest in the overnight summer camp; the age and development of the child; the child's mental health history, including any triggers that may endanger the child or others at the camp; and the child's comfort with staying out overnight.

***Is a child in foster care allowed to attend prom and post-prom activities?***

In applying the reasonable and prudent parent standard, a determination can be made as to whether a child may go to the prom and participate in post-prom activities. The caregiver should consider the child's age and maturity, the child's history of responsible behavior (e.g., performance in school, returning home by curfew), and engage (where appropriate) the birth/adoptive parent, guardian or prior caretaker and child in the decision-making. If it is determined that the child is not allowed to attend the prom and/or post-prom activities, the reason for this determination should be explained to the child.

Reasonable costs associated with a prom (e.g., dress or tuxedo) should not serve as a barrier to the youth attending the prom. Caregivers should contact the child's case worker, case planner, case manager to discuss independent living or special payments available pursuant to OCFS regulation 18 NYCRR 427.3(c)(2) funds that may be available to support participation in the prom.

***Can a child in foster care have a part-time job?***

Having a part-time job is a normative experience for adolescents. OCFS regulation, 18 NYCRR 441.10 recognizes the importance and value of work experiences for youth in foster care as they offer opportunities for beneficial skill development. Caregivers must apply the reasonable and prudent parent standard when considering whether a child is ready for a part-time job. Considerations should include the age and maturity of the child, the child's history of responsible behavior, the type of job, how the child will travel to/from the job, the number of hours and time in which the child shall work, how the job may impact the child's ability to perform academically, and the types of skills the child will develop from a part time job.

***Is a child allowed to obtain a driver's license?***

New York State law states that once a child turns the age of 16, he or she is eligible to pursue a driver's license. For those children in foster care who are under the age of 18, a parent or legal guardian must sign the consent section of the driver's license application. When determining whether or not a child who is age 16 or older should be able to obtain a driver's license, a caregiver must apply the reasonable and prudent parent standard. The caregiver should consider the maturity of the child, the child's history with responsible behavior, familiarity with the child, and insurance coverage for the child (not offered by the Office of Children and Family Services). Additionally, the caregiver should engage the child and, if appropriate, the birth/adoptive parent, guardian or prior caretaker in determining whether or not the child has permission to pursue a license.

***Is a child in foster care allowed to travel alone via public transportation?***

A caregiver may grant a child in foster care permission to travel alone via public transportation. Prior to this determination, the caregiver should consider the age and maturity of the child, if it is developmentally appropriate, the child's history with responsible behavior, familiarity with the child, the distance the child is traveling, the reason for which the child is traveling, and the child's comfort with traveling alone via public transportation. Additionally, the caregiver should engage the child and, if appropriate, the birth/adoptive parent, guardian or prior caretaker when determining whether or not to permit a child to travel alone on public transportation.

***Is a child in foster care allowed to ride in a car without the caregiver to/from school and other activities (e.g., travel home after sports practice)?***

A caregiver may permit a child to ride in a car (including a friend's car) without the caregiver to/from school and other activities. The caregiver must apply the reasonable and prudent parent standard when determining whether or not to allow a child to ride in a friend's car. The caregiver should consider the age and maturity of the child, the child's history with responsible behavior, if developmentally appropriate, familiarity with the child, familiarity with the child's friend, and the distance that is being traveled. Additionally, the caregiver should engage (where appropriate)

the birth/adoptive parent, guardian or prior caretaker when determining whether or not to permit a child to ride in a friend's car to/from school and other activities.

***Is a caregiver allowed to consent to piercings and tattoos?***

A caregiver may not provide consent for piercings or tattoos of a child in foster care. Public Health Law §460-a requires that a person be age 18 years or older in order to obtain piercings and tattoos. For those under the age of 18 years, proof of consent from a parent or legal guardian must be provided.

***Is a child in foster care allowed to go hunting?***

Environmental Conservation Law §§ 11-701 and 11-929 set forth the standards for the age at which a child may hunt, what weapons may be used, where consents are required, and the need for adult supervision. Even if the child in foster care is legally authorized to hunt, where appropriate, the birth/adoptive parent, guardian or prior caretaker should be consulted before he or she is given permission to do so. In addition, the caregiver must obtain prior permission from the local department of social services commissioner or designee before allowing a foster child in the caregiver's care to hunt. Additionally, the caregiver must apply the reasonable and prudent parent standard in determining whether to allow a child to participate in hunting; this includes considering the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, the child's history with hunting, supervision of the child while hunting (if the child is under the age of 16), and familiarity with the child.

***Is a child in foster care allowed to operate an ATV?***

Vehicle and Traffic Law § 2410 is very specific and limiting regarding the operation of ATVs by children under the age of 18. Before making any determination regarding the foster child's operation of an ATV, Vehicle and Traffic Law § 2410 must be consulted. It may also be advisable for the caregiver to confirm his or her understanding of the law with local law enforcement and document law enforcement's response. If it is determined that the age and qualifications of the child and the site to be used meets the legal specifications, the caregiver must be certain that all necessary safety training is completed, the child has the appropriate protective gear, and there is appropriate supervision by a qualified adult during the child's operation of the ATV.

In applying the reasonable and prudent parent standard to a decision regarding the child's operation of an ATV in accordance with Vehicle and Traffic Law, the following characteristics of the child must be considered: the child's age and maturity, whether the activity is developmentally appropriate, the child's history with responsible behavior, and the child's experience with operating an ATV. The caregiver should engage (where appropriate) the child's birth or adoptive parent or guardian, and the case worker, case planner, or case manager, in making this decision.