



September 2, 2021

Family, Children and Adult Services Manual Transmittal Letter No. 470

To: Family, Children and Adult Services Manual Holders  
From: Matt Damschroder, Director  
Subject: Amendment to Ohio Administrative Code (OAC) Rule 5101:2-39-01  
Removal of a child from the child’s home.

This letter transmits Ohio Administrative Code (OAC) rule 5101:2-39-01 which was amended as part of the five-year rule review. This rule sets forth the requirements that apply to a public children services agency (PCSA) and a private child placing agency (PCPA) when determining the need for a child to be removed from his/her home. The rule outlines the actions the agency must take when removing a child. This rule will become effective September 10, 2021.

The following is a brief explanation of the changes to this rule:

OAC 5101:2-39-01 entitled Removal of a Child from the Child’s Home identifies the requirements for a PCSA and PCPA when removing a child from his/her home. Language has been included to support locating and informing relative and kin in their options to support the child being removed from the home.

INSTRUCTIONS:

The following chart indicates the materials that should be removed from the Family, Children and Adult Services Manual (FCASM) and the materials that should be added.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
SOCIAL SERVICES	5101:2-39-01	5101:2-39-01
Transmittal Letters		FCASMTL No. 470

5101:2-39-01

**Removal of a child from the child's own home.**

- (A) If the public children services agency (PCSA) or private child placing agency (PCPA) has determined a child cannot be maintained safely through the implementation of voluntary safety planning, the PCSA or PCPA shall pursue removal of the child from the home.
- (B) If a child has Indian heritage, tribal eligibility or tribal membership and is removed from the child's own home, the PCSA or PCPA shall act in accordance with procedures outlined in rules 5101:2-53-03 and 5101:2-53-06 of the Administrative Code.
- (C) If removal of a child from the home is necessary, as determined by the PCSA or PCPA, the agency shall do one of the following:
- (1) File a complaint with the juvenile court with a motion requesting removal of the child.
    - (a) Provide the court with documentation of the provision of reasonable efforts to prevent removal or documentation identifying reasonable efforts are not required pursuant to paragraph (L) of this rule.
    - (b) Request the court make a determination of one of the following:
      - (i) Reasonable efforts to prevent removal were made through the provision of supportive services.
      - (ii) Reasonable efforts were not possible due to the urgent nature of the child's removal.
      - (iii) Reasonable efforts were not required pursuant to paragraph (L) of this rule.
  - (2) Petition the court for an ex parte emergency order authorizing the continued placement of the child within twenty-four hours or the next business day from the date of the child's removal from the home.
  - (3) Request the assistance of a law enforcement officer or a duly authorized officer of the court, if exigent circumstances requiring immediate intervention exist, and time does not permit obtaining a court order.
- (D) Upon removal of the child, the PCSA or PCPA shall provide the child if age and developmentally appropriate and the child's custodial parent, non-custodial parent, guardian, or custodian with the following information and document the date and method of notification in the case record in accordance with rule 5101:2-33-23 of the Administrative Code ~~verbally and in writing:~~

- (1) Reason for the removal.
  - (2) PCSA or PCPA name, telephone number, address, and name of person to contact regarding the case.
  - (3) Visitation schedule prior to a journalized family case plan, inclusive of sibling visitation if not placed together.
  - (4) ~~Date, time, Time~~ and place of court hearings, if applicable.
  - (5) The name and telephone number of the employee designated by the court to provide the appointment of counsel to a custodial parent, non-custodial parent, guardian, or custodian who cannot afford to hire an attorney if known.
- (E) In the absence of the custodial parent, non-custodial parent, guardian, or custodian, the PCSA or PCPA shall provide or attempt to provide the custodial parent, non-custodial parent, guardian, or custodian with the information stated in paragraph (D) of this rule within twenty-four hours of the removal.
- (F) The PCSA or PCPA shall make reasonable efforts to place siblings in the same foster home, kinship home, or adoptive placement unless the PCSA or PCPA has documented that joint placement would be contrary to the safety or well-being of any of the siblings.
- (G) If siblings are not placed together the PCSA or PCPA shall do one of the following:
- (1) Develop a written visitation plan pursuant to rule 5101:2-38-05 of the Administrative Code.
  - (2) Develop a written visitation plan pursuant to rule 5101:2-38-07 of the Administrative Code.
- (H) The PCSA or PCPA shall do all of the following within thirty days after removal of a child from his or her custodial parent, non-custodial parent, guardian or custodian:
- (1) Exercise due diligence in identifying the following relatives and/or kin:
    - (a) All maternal and paternal grandparents.
    - (b) Individuals related by blood or adoption ~~Other adult relatives of the child.~~
    - (c) A parent who has legal custody of the child's sibling including blood, half-blood, or adoption ~~Any adult relatives suggested by the child's parents.~~

(d) Any non-relative adult the child or the child's parent, guardian, or custodian identifies as having a familiar relationship with the child and/or the family  
~~A parent who has legal custody of the child's sibling including blood, half-blood or adoption.~~

(2) Provide notice to all adult relatives and kin identified in paragraphs (H)(1)(a) to (H)(1)(d) of this rule specifying all of the following and documenting the date and method of notification in the case record in accordance with rule 5101:2-33-23 of the Administrative Code:

(a) The child has been or is being removed from the parents' custody.

(b) The options the relative or kin has to provide support for the child:

(i) Babysitting.

(ii) Companionship.

(iii) Emotional support.

(iv) Mentorship.

(v) Respite care.

(vi) Transportation.

~~(b)(c)~~ (c) The options the relative or kin has to participate provide in the care and placement of for the child including: ~~any options that may be lost by failing to respond to the notice.~~

(i) The requirements to become a licensed foster caregiver in accordance with rule 5101:2-7-02 of the Administrative Code and the additional services and supports available for children placed in a foster home.

(ii) Available kinship support in accordance with rule 5101:2-42-18.2 of the Administrative Code.

~~(e)(d)~~ (d) The potential of legal permanency of the child if the parent, guardian, or custodian is unable to regain custody of the child removed ~~The requirements to become a licensed foster home and the additional services and supports available for children placed in a foster home.~~

(e) The failure to respond to the notification may impact the future ability to provide support, care, and placement of the child.

- (3) Document in the case record if any adult relative or kin identified pursuant to paragraph (H)(1) of this rule has a history of family violence. The PCSA or PCPA is not required to notify adult relatives or kin with a history of family violence pursuant to paragraph (H)(2) of this rule.
  - (4) Provide information to relative or kin respondents in accordance with rule 5101:2-42-90 of the Administrative Code and assess the ~~Assess relative~~ respondents pursuant to rule 5101:2-42-18 or 5101:2-52-04 of the Administrative Code to determine whether or not placement is approved. Upon placement of the child with an approved relative or kin, the PCSA or PCPA is not required to assess any other ~~relative~~ respondent; but shall keep a recorded list of the identified adult relatives and kin in the case record.
- (I) Nothing in paragraph (H) of this rule shall preclude the PCSA or PCPA from identifying and notifying relatives or kin not expressly identified in paragraph (H) (1) of this rule, that the child has been or is being removed from the parents' custody.
- (J) At any hearing on the continued placement of the child, the PCSA or PCPA shall provide the court with documentation and request the court make a determination of one of the following:
- (1) Reasonable efforts have been made and continue to be made to make it possible for the child to safely return home through the provision of supportive services.
  - (2) Reasonable efforts were made and continuation of reasonable efforts to make it possible for the child to safely return home is inconsistent with the permanency plan for the child.
- (K) The PCSA or PCPA shall provide the court with documentation and request the court make a judicial determination that reasonable efforts have been made to finalize the permanency plan in accordance with rule 5101:2-47-22 of the Administrative Code.
- (L) Reasonable efforts to prevent removal or to return the child home are not required if the PCSA or PCPA finds the parent from whom the child was removed has:
- (1) Been convicted of or pleaded guilty to one of the following:
    - (a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, another state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the

victim was another child who lived in the parent's household at the time of the offense;

- (b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
  - (c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
  - (d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
  - (e) An offense under sections 2905.32, 2907.21, and 2907.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
  - (f) A conspiracy or attempt to commit, or complicity to committing, an offense described in paragraph (L)(1)(a), (L)(1)(d), or (L)(1)(e) of this rule.
- (2) Been required to register with a sex offender registry in accordance with section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006.
  - (3) Repeatedly withheld medical treatment or food from the child if the parent has the means to provide the treatment or food. If the parent withholds medical treatment in order to treat the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body, the agency shall comply with the requirements of division (A)(1) of section 2151.419 of the Revised Code.

- (4) Placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and rejects treatment two or more times or refuses to participate in further treatment two or more times after a family case plan is developed pursuant to rule 5101:2-38-07 or 5101:2-38-05 of the Administrative Code requiring treatment of the parent and is journalized as part of a dispositional order issued with respect to the child or an order is issued by any other court requiring such treatment of the parent.
  - (5) Abandoned the child.
  - (6) Had parental rights terminated pursuant to section 2151.353, 2151.414, or 2151.415 of the Revised Code with respect to a sibling of the child.
  - (7) Deserted the child pursuant to section 2151.3515 of the Revised Code.
- (M) If the PCSA or PCPA removes a child from the home due to abuse, neglect or dependency and the family is a participant in Ohio works first (OWF), the PCSA or PCPA shall notify the county department of job and family services (CDJFS) of the child's removal according to procedures contained in the OWF county plan of cooperation.
- (N) At the end of each month for the first five months after the PCSA or PCPA takes the child into custody, the agency shall provide the CDJFS with the following information:
- (1) Whether or not the custodial parent, non-custodial parent, guardian, or custodian is cooperating with the family case plan prepared pursuant to rule 5101:2-38-05 or 5101:2-38-07 of the Administrative Code.
  - (2) Whether or not the PCSA or PCPA is making reasonable efforts to return the child to the home of the OWF assistance group.
- (O) The PCSA or PCPA shall document all activities, notifications and copies of court documents required by this rule in the case record.

Effective: 9/10/2021  
Five Year Review (FYR) Dates: 6/25/2021 and 09/10/2026

CERTIFIED ELECTRONICALLY

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Certification

08/31/2021

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Date

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Statutory Authority: 2151.412, 2151.421  
Rule Amplifies: 2151.412, 2151.421, 2151.419  
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