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**A Guide to The New DCF Foster Care Review Policy and Regulations**

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On March 4th, 2019, DCF substantially edited its Foster Care Review (FCR) Policy. In September 2019, DCF promulgated new regulations. The regulations and policy now align, although the policy is more detailed.

The new policy and regulations are clearer than the old ones in many ways. They lay out the responsibilities of different DCF actors for different aspects of the review more precisely than the previous policy. The policy also makes some significant changes, including eliminating the system of rating each party on compliance with action plan tasks. These changes could be good or bad for our clients, depending on many factors.

Below is a list of the most substantive changes, followed by a brief guide to the conduct of FCRs under the new regulations and policy. Please note that this guide concerns only FCRs. The newly issued 110 C.M.R. 6.00 also covers Permanency Hearings. The former regulation 6.00 also covered action plans, which are now technically not covered by any regulation. CPCS will issue separate guidance on the new Permanency Hearing regulations.

**Important Changes:**

* The new regulations and policy (collectively “the new documentation”) make attorneys for parents mandatory invitees—previously only attorneys for children were considered mandatory. 110 C.M.R. 6.02(4)(j)
* The new documentation lays out much more detailed procedures for scheduling the review, contacting attendees, and making accommodations. It also explains specifically which DCF personnel are responsible for which aspect of preparing for the review. 110 C.M.R. 6.02(5-8)
* The determinations have changed. The previous system rated each party on their “full” “partial” or “non-compliance” with their action/service plan tasks. The new policy removes this rating and replaces it with a different set of questions for each party. 110 C.M.R. 6.02(9).
	+ Parents are rated on whether they have participated in the action plan and on whether they have made “observable change.” 110 C.M.R. 6.02(9)(d)(1)
	+ Placement providers are rated simply on whether they have “fulfilled expectations to meet the child’s needs.” 110 C.M.R. 6.02(9)(d)(5)
	+ DCF is rated on whether it has “completed the necessary steps to address the needs of the family.” 110 C.M.R. 6.02(9)(d)(3)
* A new section of determinations has been added to reflect the federal requirement that foster children be cared for in accordance with the “reasonable and prudent parent standard.” 110 C.M.R. 6.02(9)(f)

**Before the Review**

**What is a Foster Care Review?**

A Foster Care Review (FCR) is a meeting held every six months to assess progress in a case. It is an administrative DCF proceeding, not a court date.FCRs are run by the Foster Care Review Unit (FCRU), a theoretically independent unit within DCF.

According to the new policy, the purpose of a review is “to assess the progress being made to address the reason(s) for the Department’s involvement with the family” and “to examine and make recommendations regarding efforts to safely achieve permanency for the child, youth, or young adult.”

**How are they scheduled?**

The policy (§ II.C) states that before the review, the case worker should fill out an electronic calendar with the availability of each invitee, including parents and attorneys. C&P court dates in the case are blocked off automatically. The FCRU then schedules the review.

Clients are usually notified by letter. DCF previously notified attorneys by letter or email, but they have recently introduced an “attorney portal” system. Under this new system, attorneys representing parents or children will log in to the portal to enter their unavailability and view information about their foster care reviews. You can see DCF’s how-to guide for the portal at this link: https://www.mass.gov/how-to/attorney-connect-portal

*In practice some offices may not follow the policy and invite you to a pre-scheduled review at the last minute.*

**In which cases should I expect a Foster Care Review?**

The review occurs every six months when a child, or young adult under age 22, is in placement.

In placement means in DCF custody through a court order (C&P, CRA, PYA, or voluntary placement) AND living outside of the home. This means that a review should not be scheduled if all the children are placed at home.

**Who is in charge at the Foster Care Review?**

A Case Reviewer from the FCRU runs the review, but shares decision-making responsibility with the other members of a three-person panel. The panel consists of the reviewer, the “second party reviewer” and the volunteer.

The Second Party Reviewer is a manager or supervisor from the area office where the review is being held. They are not assigned to the case in question. According to the regulations, the second party may be a non-DCF-employee, but the policy does not allow for this option. 110 C.M.R. 6.02(3)(b). *While in theory the second party brings balance to the review, they typically back the decisions of DCF.*

The volunteer is a person from outside of DCF, recruited and trained by the Department. According to both the regulations and the policy, though only sometimes in practice, they are demographically representative of the community served. Policy § I (paragraph 5); 110 C.M.R. 6.02(3)(C)(1).

*In practice, reviews are sometimes held with the second party or volunteer absent. A review is never held without a reviewer from the FCRU.*

**Who else attends the review?**

DCF uses the term “mandatory invitees” for people who must be invited to an FCR. Mandatory invitees should receive an inquiry about scheduling from the caseworker and later a notification of the date/time and place of the review. Policy Appendix A; 110 C.M.R. 6.02(4)

The list of mandatory invitees is: Parents; guardians; young adults in DCF care, children/youth over age 14 in DCF custody (the social worker must arrange transportation); placement resources i.e. foster parents or residential staff; attorneys for children, parents, and PYA young adults; the assigned DCF caseworker and supervisor; the DCF attorney (whether they regularly attend depends on the local practice); and other assigned DCF workers such as adoption or family resource workers.

*If the children are in a kinship placement which your client supports, check to make sure the placement provider was notified of the review. Often they don’t know about it or don’t notice the letter—it looks bad if they don’t show up.*

While the policy does not explicitly mention additional people, the regulations state that a parent may invite “other persons to provide support” such as a friend or service provider. 110 C.M.R. 6.02(4)(a). In addition, the regulations state that the mandatory invitees include “staff of other public or private agencies and other individuals important to the child or family.” 110 C.M.R. 6.02(4)(l)

**What if my client has a special circumstance?**

Location change: Normally FCRs happen at the DCF office associated with the case. However, they can be held at alternate locations**.** If your client is incarcerated you can ask to hold the review at the jail/prison. You may also ask to hold the review at a different DCF office closer to your client’s location. Policy § II.C.1; *see also* 110 C.M.R. 1.10 (“The Department's efforts shall include . . . the holding of case conferences and other consultations at the correctional facility”).

Interpreter: A parent or child who is not fluent in English has the right to an interpreter at a review. § II.C.1; 110 C.M.R. 6.02(6)(f); *see also* 110 C.M.R. 1.06. However, the policy states that an individual review can only be rescheduled twice for want of an interpreter. § II.C.10. *Make sure to put DCF on notice as early as possible if your client requires an interpreter. If your client’s review goes forward without an interpreter, consider filing a grievance or fair hearing on language access grounds. See the CPCS Language Access page on MyGideon for more helpful resources.*

Safety Concerns: The case worker can request a security detail or a split review (in which each parent’s review is held separately). The reviewer makes the final decision. Reviews are always split if there is an active restraining order prohibiting contact between the parents. § II.C.13-16.

The policy also states that the area director may outright exclude a parent with a history of violent behavior from the review under certain conditions—see Policy § II.C.16.

Phoning in: The policy states that a request to phone in must be made 10 days in advance of the review to the case worker. *If you did not receive adequate notice, or if you’ve passed this deadline for some other reason, it can’t hurt to still ask to call in. The ten day requirement is often not enforced in practice.*

**During the Review**

**How will the review begin?**

The review typically begins with a verbal summary of how DCF got involved with the family and how the removal happened.

The policy states that the social worker should give this summary and that it should discuss the case history, the current action plan, the strengths of the family, the “observable progress” of the family, the progress to the goal, the results of 29Bs, Permanency Planning Conferences (PPCs), or other “intervening reviews,” significant developments since the last review, and the proposed permanency plan and target date. Policy § II.D.12

*In practice: The case worker or case reviewer often invites the parents to give a verbal summary of DCF’s involvement. While in theory this practice is empowering to the parent, in practice it may get the review off on the wrong foot if the parent’s summary omits facts that the case worker believes are pertinent, causing a back-and-forth argument between the parent and caseworker. When representing parents, it can be helpful to prepare them to give a summary. The parent should accept responsibility for their own actions if appropriate, though you advise your client not to make any admissions that could be used against them in a criminal context. This is also the parent’s chance to clearly explain if and how DCF acted wrongly during the removal.*

**What will be decided at the review?**

There are roughly three categories of decisions made at the review: Goal changes, determinations, and recommendations. All of the decisions are made by a majority decision of the panel.

Goal Changes are a change in DCF’s formal goal for one of the children. The goal must be one of six statutorily prescribed categories: Reunification, Stabilization of the family (used when children are living at home), Care with Kin, Guardianship, Adoption, and Another/Alternative Permanent Planned Living Arrangement (APPLA, usually used for a goal of independent living/aging out of foster care. APPLA cannot be a goal for a child younger than 16. An APPLA plan should include information about lifelong connections to caring adults and building skills for adulthood).

*Clients often believe that, for example, a DCF goal change to Adoption means that a child will be adopted. It’s important to take a moment before the review to explain to your client what a goal change means. Goals do not affect parental rights, the trial process, or DCF’s obligation to pursue concurrent planning.*

The reviewer can recommend a change of goal, but the goal will not actually change until a Permanency Planning Conference (PPC), an internal DCF meeting at which a goal change can go into effect. *Since parents, children, and attorneys are not invited to PPC’s, the FCR can be the last chance to formally protest the goal change before it goes into effect.*

As required by the regulations, the reviewer will ask the caseworker to identify a “target date” for the goal, meaning an approximate date by which the goal is likely to be achieved. *Parents often fixate on the date, as it is one of the few pieces of concrete information that they have. It’s important to counsel parent clients that the target date has no real legal meaning; nothing will be triggered if the goal is not achieved by that date.*

The regulations also require the panel to consider whether or not progress has been made towards the identified goal. The reviewers often use the language of “sufficient” or “insufficient” progress. *See* 110 C.M.R. 6.02(9)(g)

Determinations are binding. They are intended to affect DCF’s casework and action planning going forward. The policy sets forth a list of determinations which the review team must make and list in the FCR report which will be sent out after the review. While the determinations are phrased in a way that seems to welcome nuanced or detailed answers, in most cases the reviewer must give a binary “yes or no” answer to each question. See Policy §§ II.A (p. 4-5) and II.E.1; 110 C.M.R. 6.02(9)

Changes in the Determinations: Some of the determinations were also present in the previous documentation, including whether or not there are concerns for the child’s safety, and whether the child’s placement is necessary and appropriate.

Under the old policy, the next step in the review after answering those questions was to review the service/action plan and rate each party (parents, DCF, older children, and substitute care providers) on their “full” “partial” or “non-compliance” with their action plan tasks. The new policy replaces this system with a new set of questions which are seemingly intended to be broader in scope. However, the reviewers are still required to answer each determination with one of a set of multiple-choice radio buttons, leaving little room for subtlety or explanations outside of the “narrative summary” of the report.

Parents: Under the new policy, parents are now rated on whether they “participated in the action plan” and separately on whether they “demonstrated behavioral change to reduce or alleviate danger or need for placement or to achieve desired outcome.” 110 C.M.R. 6.02(9)(d)(1)

This change may work both for and against parents. Some parents may be able to get a positive rating even if they did not complete all their action plan tasks. On the other hand, some parents may be worse off under this change. DCF caseworkers may say that a parent just “checked off the boxes” of the action plan without really learning from it. It’s difficult to come back from such a vague assertion and subjective assessment.

Foster Care Providers: The review of action plan tasks for the substitute care provider has been replaced with a single question of whether the provider “fulfilled all placement expectations to meet the child’s needs.” 110 C.M.R. 6.02(9)(d)(5)

DCF: Similarly, DCF is no longer rated on whether the workers have complied with their action plan tasks but on whether DCF has “completed the necessary steps to address the needs of the family.” This means that it is possible to raise issues at the review that are not mentioned in the action plan. It also means that DCF is no longer held to any particular set of requirements on a given case. 110 C.M.R. 6.02(9)(d)(3)

The Reasonable and Prudent Parent Standard: The new documentation also has additional determinations to address the federal requirement of a “reasonable and prudent parent standard” meaning that foster children should be able to do activities normal to the life of a child/teen, such as visiting a friend’s house, afterschool activities, going on school trips, etc. The two new determinations are: (1) Has DCF taken steps to ensure the child’s placement followed the reasonable and prudent parent standard? and (2) Has DCF taken steps to ensure the child’s placement offered the child regular ongoing opportunities to engage in age or developmentally appropriate activities, working to help develop this child’s special talent, interest or gift? 110 C.M.R. 6.02(9)(f)

Recommendations are not binding. The policy lists a number of discussion topics, to be covered in a free-form discussion, and states that recommendations should be “solicited from all participants.” *Although recommendations are not binding, if they are listed in the FCR report they may be useful to raise at trial, or in later motions or informal advocacy on those issues.* In addition to the determinations, suggested topics from the policy include: Discussion of recent reviews such as 29B hearings and 6-week reviews, health care and educational needs of the child, “Whether the child ... is or should be placed with kin and/or siblings”, the schedule for visits with parents, siblings, and grandparents, and, for older children or youths, the plan for potentially signing on with DCF after age 18. See § I of the policy for more information about recommendations. Under the regulations, *discussion* of signing on after age 18 is mandatory. 110 C.M.R. 6.02(11).

*When representing older children who want to sign on with DCF at age 18, try to make sure the plan to sign on is discussed. The policy states that this discussion must happen if the child is aged 17 years 6 months or older, but it may be helpful to advocate to have the discussion earlier, if the next FCR will not happen until the child is almost 18. See CPCS’s memo on new regulations regarding permanency hearings and young adult services – out shortly – for more detail.*

*The policy provides for discussion of safety concerns for “consumer children” even if they are not in placement. It’s a good idea to make sure your client is prepared for this discussion if they have some children living at home with them.*

**After the Review**

**When will I find out the results of the review?**

Under the policy you should receive the report within 40 working days of the review, allowing for mail to arrive—about 8 weeks. Reports may arrive sooner or later than this period. If your report takes a long time to arrive and you are not sure what the determinations were, ask DCF. The determinations must be noted in the computer system within 30 days of the review.

DCF may begin issuing reports through the online attorney portal, hopefully allowing for faster delivery. Some reports are already being sent by email.

The regulations state only that certain participants, including attorneys for parents and children, shall receive a copy of the report. 110 C.M.R. 12

*If you represent a child aged 14 or older, or a parent of a child that age, consider warning your client that the child will receive a copy of the report in the mail. Especially if the child did not attend the review, it can be upsetting for a child to receive an often context-less report full of information about a parent’s alleged shortcomings.*

*If your client requires an interpreter, consider asking DCF to have the report translated or requesting funds to pay for a translation.*

**How can I appeal the review?**

Goal Changes can be challenged through the fair hearing process. A fair hearing must be requested within 30 days of receiving the report. Goals can also be challenged in court at permanency hearings/29Bs.

Other Determinations can be appealed through the DCF grievance process.

See the policy § II.F.7 and 110 C.M.R. 6.02(14) for more information about administrative appeals.