

Georgia's Responsibility Toward Children in Foster Care

An Executive Summary

On any given day the state of Georgia has legal custody of 14,000 – 16,000 child victims of abuse and neglect. For these children, the state has stepped into the role of parent and has the statutory obligation to provide them with food, clothing, shelter, education, and medical care. Details about how the state must fulfill its responsibility to these children are enumerated in a complex combination of state and federal statutes, court decisions, state regulations, agency policies, and local practice. This manual integrates information from all these sources into one reference document that provides a clear approach to examining foster care requirements and an opportunity to examine gaps in practice.

The manual briefly traces the development of child welfare policy in the United States and uses that as a context to examine Georgia laws and Department of Human Resources rules, regulations, and policies related to foster care. It concludes with potential remedies available when the state fails to live up to its responsibilities toward children in state custody.

This manual is written for everyone who makes decisions about children in foster care, from elected officials determining funding allocations to foster parents establishing bedtimes. Every such decision, no matter how broad or narrow it may appear, impacts the life of a child in Georgia. Decisions affecting children in foster care must be made in compliance with and in furtherance of federal and state rules, regulations, and policies. Therefore, decision-makers must know the parameters within which they must operate. This manual is also written for the children in foster care so that they better understand the state's responsibilities toward them once the state has stepped in to protect them.

Before a child is placed in foster care, a judge must first determine that the child is deprived. This decision includes findings that reasonable efforts were made by the Division of Family and Children Services (DFCS) to prevent the child from coming into care and that leaving the child in the home would be contrary to the child's welfare. In all stages of the court process related to the abuse, the child is to be represented by a trained guardian ad litem. As a party to the case, the child has enumerated rights including the right to representation and to appeal decisions.

The health and safety of children must be the paramount concern when the state intervenes in the lives of abused children. The federal Adoption and Safe Families Act (ASFA) requires this, and the ASFA regulations require courts to ensure that the mental and physical health needs of deprived children are met. This manual explains how Georgia must protect children in foster care from harm, provide them with food, clothing, shelter, medical care, education, and appropriate opportunities to play and engage in recreational activities.

Once in foster care the state has responsibilities to the child and to the child's caregivers. Foster homes and other types of temporary placements for children must undergo a

rigorous screening, training, and approval process and are subject to limits regarding the number and needs of children who can be housed together and the types of discipline caregivers can use. DFCS must see that comprehensive assessments of the child's needs are conducted within thirty days of when the child enters care and the needs should then guide placement decisions. Children are to be placed in the least restrictive, most family-like setting possible and children of the same family are to be kept together whenever possible. Information that might impact the way that care is provided must be shared with caregivers, such as the child's history in her home and in state custody, and any risk factors that would impact the health and safety of the child or others in the household.

When children come into foster care, they are to participate in the development of an individualized case plan. This is the blueprint for what everyone involved must do to remedy the problems resulting in the child being placed in foster care. The case plan and activities related to it are to be reviewed at least every six months and should result in the child reaching a permanent placement in a timely manner. The permanent placement may be with the child's family or it may be elsewhere, but a permanency hearing must be held within twelve months of a child entering foster care. While there may be exceptions, in most cases a child should not spend more than fifteen out of twenty-two months in foster care without DFCS filing a petition to terminate the child's parents' rights and developing a plan for the identification of a permanent placement for the child. If DFCS petitions to terminate parental rights, the children are to be represented by counsel in proceedings related to the termination.

Children who are in foster care are to have monthly contact with a case manager and regular meaningful visits with their parents, siblings, and other important adult figures in their lives. Visitation with parents and siblings is so important to the well-being of children in state custody that the first visit with their parents is to occur within the first week of placement if at all possible. Other contact such as phone calls and letters should be encouraged, particularly if the goal is to reunite the family.

The individual needs of each child in foster care are to be met by the state. For example, to the extent possible, children should attend their regular place of worship. In addition, if children have particular dental, medical, vision, or mental health needs, those should be addressed as soon as possible. Children in foster care are almost always entitled to Medicaid benefits, which under federal law cover all medically necessary services for children. Furthermore, children who are in special education should continue receiving services required through their individualized education plans, and DFCS is to cooperate with the juvenile court and state and local school systems to ensure that children receive educational services that are appropriate for their needs.

Very young children and teenagers in foster care have particular needs. All children under the age of three who have a substantiated case of child abuse or neglect are to be referred to early intervention services funded under Part C of the Individuals with

Disabilities Education Act. In Georgia, this means that all children with substantiated deprivation cases, even if they are not in DFCS custody, must be referred to the Babies Can't Wait program in the state Division of Public Health. A broad range of services are provided to eligible children through Babies Can't Wait, and services can be provided for the child's caregivers, not just the child herself.

Beginning at age fourteen, all children in foster care are to be referred to the independent living program (ILP). Through the ILP they develop a written transitional living plan (WTLP) that specifies what services will be provided to prepare them for a self-sufficient adulthood. Children age fourteen and older are also specifically required to receive formal notice of proceedings involving them. Starting at age sixteen, youth in foster care are to be informed about the possibility of remaining in foster care voluntarily until age twenty-one, to accomplish the goals of the child's WTLP. Youth remaining in care until age twenty-one and those who do not remain in care but need to continue receiving supportive services, can receive financial assistance for secondary education and for transition from foster care to self-sufficiency. However, their medical coverage does not extend beyond age nineteen.

In addition to explaining the details of Georgia's responsibilities toward children in foster care, the manual delineates the federal child welfare laws that guide Georgia policy and practice, discusses the funding streams through which federal money flows to Georgia for the care of abused children and their families, and discusses ways that compliance with laws and policies is monitored. In order to receive federal funding through Title IV-B and IV-E of the Social Security Act, along with other sources of federal funding, Georgia must have a comprehensive state plan detailing how the child welfare system will work.

The federal Administration of Children and Families (ACF) periodically reviews the operations of each state's child welfare system. The most recent comprehensive Federal Child and Family Services Review occurred in 2001. Georgia was not in compliance with any of the seven federal outcomes related to safety, permanency, and child and family well-being, but Georgia was in compliance with four of the seven systemic factors related to the successful operation of systems for monitoring cases, training staff, providing appropriate and high quality services, and recruiting and licensing foster and adoptive parents. Since October 2002, Georgia has been implementing an ACF-approved Program Improvement Plan designed to bring Georgia into substantial compliance with the federal outcomes and systemic factors.

The manual concludes with an overview of remedies that are available to children in foster care when the state does not protect them from harm or provide appropriate care and services to meet their individual needs. Available remedies include working with individuals and agencies designated to help these children such as their child advocate attorneys and the Georgia Office of the Child Advocate, and bringing legal actions such as Section 1983 civil rights claims, tort actions, and contract claims.

Children who spend time in foster care face greater challenges than other children and

need special attention to overcome those challenges. The growing body of research on the outcomes of children who spend time in foster care illustrates the need for sound policy and practice for child protection. Children who age out of foster care have great difficulty becoming healthy, self-supporting adults. During their early adulthood they are likely to be homeless, unemployed, uneducated, struggling with mental and physical health problems, and in trouble with the law. Georgia can improve outcomes for abused children by fulfilling the responsibilities it has to them when the state takes the dramatic step of intervening into families to protect children.