

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ARIZONA CODE OF JUDICIAL)	Administrative Order
ADMINISTRATION § 7-102: FOSTER)	No. 2019 - <u>05</u>
CARE REVIEW)	(Affecting Administrative
)	Order No. 2003-36)
)	

The above-captioned provision having come before the Arizona Judicial Council on December 13, 2018, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above-captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration.

Dated this 16th day of January, 2019.

SCOTT BALES
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 7: Administrative Office of the Courts Programs
Chapter 1: Dependent Children's Services
Section 7-102: Foster Care Review

A. Definitions. In this section, the following definitions apply:

“*In camera* inspection” means a judge’s inspection ~~in chambers~~ of a document which is the subject of a request for disclosure before ruling on its release.

“Child” means “any person under eighteen years of age” as provided in A.R.S. § 8-101(4).

“Child Welfare Agency” ~~means~~

“(a) Means:

- (i) Any agency or institution maintained by a person, firm, corporation, association or organization to receive children for care and maintenance or for twenty-four hour social, emotional or educational supervised care or who have been adjudicated as a delinquent or dependent child.
- (ii) Any institution that provides care for unmarried mothers and their children.
- (iii) Any agency that is maintained by ~~the~~ this state, ~~or~~ a political subdivision ~~thereof, of this state or~~ a person, firm, corporation, association, or organization to place children or unmarried mothers in a foster home.
- (b) Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions ~~which~~ that are licensed by the department of health services pursuant to title 36, chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and do not use restrictive behavior management techniques².

as provided in A.R.S. § 8-501 (A)(~~1~~2)(a)(b).

~~“Local boards” are groups of three to five volunteers appointed by the presiding juvenile court judge to review cases of children in out-of-home placement.~~

“Out-of-home placement” means “~~...t~~[T]he placing of a child in the custody of an individual or agency other than with the child’s parent or legal guardian and includes placement in temporary custody pursuant to section 8-821, ~~subsection A or B~~, voluntary placement pursuant to section 8-806 or placement due to dependency actions.” as provided in A.R.S. § 8-501(A)(~~7~~9).

“Petition” means “~~...a~~[A] written statement of the essential facts that allege ... dependency” as provided in A.R.S. § 8-201(~~22~~7).

~~“Removal review team” means a group assembled for the purpose of assessing the propriety of taking a child from its parent or guardian.~~

~~“Parties” means “...a[A] child, parent, guardian, the Arizona Department of Economic Security Child Safety or petitioner, and any person or entity who has been permitted to intervene pursuant to Rule 24, Ariz. R. Civ. P., or the Indian Child Welfare Act as provided in Rule 37(A), Arizona Rules of Procedure for the Juvenile Court.~~

~~“Participants” means “...f[F]oster parents and any other person permitted by the court or authorized by law to participate in the proceedings” as provided in Rule 37(B), Arizona Rules of Procedure for the Juvenile Court.~~

B. Authority. ~~A.R.S. § 8-515.04 and A.R.S. § 8-515.01 and A.R.S. § 8-515.04 establish state and local foster care review boards and the state foster care review board and authorizes the supreme court to adopt rules relating to the function and procedures of the boards:~~

1. ~~State-Local Foster Care Review Boards.~~ A.R.S. § 8-515.0401(A) provides:

~~There is established within the supreme court the state foster care review board which shall be composed of seven persons with knowledge of the problems of foster care appointed by the supreme court and the members of the local foster care review boards appointed by the presiding judge of the juvenile court. In counties having only one foster care review board, the judge shall appoint one member. In counties having more than one foster care review board, the presiding judge of the juvenile court shall appoint to the state board only one member for every three boards. Terms of office of members of the state board, who are local board members, shall be coterminous with their terms as members of local review boards. Terms of office of members who are appointed by the supreme court shall be not less than two years, nor more than five years.~~

~~The presiding judge of the juvenile court in each county shall establish local foster care review boards for the review of cases of children who are in out-of-home placement and who are the subject of a dependency action to assist in the review required pursuant to section 8-862. The judge shall establish one board for each one hundred children, or fraction of that number. The judge may decide not to create an additional review board if the number of children assigned to a review board exceeds one hundred by fewer than fifty children.~~

2. ~~Local State Foster Care Review Boards.~~ A.R.S. § 8-515.0404(A) provides:

~~The presiding judge of the juvenile court in each county shall establish local foster care review boards for the review of cases of children who are in out-of-home placement and who are the subject of a dependency action to assist in the~~

~~review required pursuant to section 8-862. The judge shall establish one board for each one hundred children, or fraction of that number. The judge may decide not to create an additional review board if the number of children assigned to a review board exceeds one hundred by fewer than fifty children.~~

The state foster care review board is established within the supreme court consisting of three persons who have knowledge of the problems of foster care and who are appointed by the supreme court and of the members of the local foster care review boards who are appointed by the presiding judge of the juvenile court. In counties having only one foster care review board, the judge shall appoint one member. In counties having more than one foster care review board, the presiding judge of the juvenile court shall appoint to the state board only one member for every ten boards except that not more than six members may be appointed from any county. Members of the state board who are local board members shall serve terms that are coterminous with their terms as members of local review boards. Members who are appointed by the supreme court shall serve terms that are not less than two years, nor more than five years.

C. Purpose. Pursuant to A.R.S. § 8-515.04 01 and A.R.S. § 8-515.~~01~~04, the Foster Care Review Board (FCRB) program is established to administer a statewide system of reviews for children who are in out-of-home placement and who are the subject of a dependency action.

D. General Administration. A.R.S. § 8-515.04(D) provides: “The supreme court shall employ a coordinator and other personnel it deems necessary to carry out the duties of the state board and the local boards. Compensation for all personnel shall be determined pursuant to section 38-611.”

1. Program Manager. The director shall appoint a program manager (manager) to serve as statewide program coordinator pursuant to A.R.S. § 8-515.04(D). The manager shall:
 - a. Prepare fiscal ~~projects~~ projections, create a budget, allocate and expend funds for program;
 - b. Assist in the fiscal administration of the program;
 - c. Oversee training for all ~~staff including~~ FCRB state program office staff and volunteers;
 - d. Notify the presiding juvenile court judges of potential applicants to fill local board vacancies;
 - e. Work with the judges to recruit potential board members;

- f. ~~Work with the state board to develop its report, e~~Coordinate local boards, and develop training for FCRB program volunteers;
 - g. Review all board member applications prior to submission to the local juvenile court judge for appointment;
 - h. Provide training established pursuant to A.R.S. § 8-515.04(E) for review board members;
 - i. Maintain professional working relationships with key stakeholders, including the juvenile court judges, DES staff state agencies and other community groups; and
 - j. Cooperate with other agencies and states in regard to research projects dealing with foster care.
2. ~~The AOC, through the manager, shall review~~ monitor all local FCRB programs to assess each county's the program, local boards, and the state board to ensure compliance with state statutes, juvenile court rules, this section, and FCRB program policies and procedures.
 3. Under the direction of the administrative director and manager, program specialists shall facilitate the local boards and support standing and ad hoc committees of the state ~~FCRB and the local~~ boards.

E. State Foster Care Review Board. A.R.S. § 8-515.04(C) provides:

The state board shall meet no less than twice annually and more frequently ~~upon~~ the call of the chairman or as the board ~~shall~~ determines. The supreme court may adopt reasonable rules relating to the functions and procedures of the local boards and the state board in accordance with the duties of the boards as provided in this article. The state board shall review and coordinate the activities of the local boards ~~and make recommendations to the supreme court, the governor and the legislature on or before January 15 of each year regarding foster care statutes and policies and procedures.~~

1. Membership Responsibilities, ~~pursuant to A.R.S. § 8-515.04~~
 - a. “The state board shall select a chairman and a vice-chairman and other officers it deems necessary.” A.R.S. § 8-515.04(B) The chairman of the state board shall be elected for a two year term. If the chairman is also a local board chairman, the chairman shall automatically serve a two year term as a local board chairperson. All other officers of the state board shall have one year terms.

b. Supplemental Rules of the State Foster Care Review Board, Rule 3 provides:

The chairperson of the State Foster Care Review Board shall be elected for a two year term. If s/he is also a local board chairperson s/he shall automatically serve a two year term as a local board chairperson. All other officers of the State Foster Care Review Board shall have one year terms.

~~bc.~~ “The state board shall establish training programs for local board members, which shall include periodic in-service training.” A.R.S. § 8-515.04(E)

2. ~~Executive Committee. The state board shall create an executive committee consisting of the chairman, vice chairman, review board director, and up to five other members elected by the board. The executive committee shall also include two members from District I, one member from District II, two members from any district other than I or II, and two members from any district. The executive committee may act on the behalf of the state board between meetings, but actions of the executive committee on behalf of the state board shall require ratification for continuance by the board. Rule 3 of the Rules of Procedure for the Foster Care Review Boards provides:~~

(a) An executive committee of the State Board shall be created consisting of the chairman, vice-chairman, review board coordinator, and up to five other members elected by the board. The executive committee may act on the behalf of the State Board between meetings.

(b) The state board may appoint such committees as it deems necessary to conduct business.

(c) Actions of the executive committee on behalf of the state foster care review board shall require ratification for continuance by the board.

3. Composition of the Executive Committee. Rule 4 of the Supplemental Rules of the State Foster Care Review Board provides: “The composition of State Board members on the Executive Committee shall be:

Two members from District I

One member from District II

Two members from any District other than I or II

Two members from any District”

For the purposes of this code section, counties are defined as districts. District I is Maricopa County, District II is Pima County, and all other counties are designated as counties other than I or II.

34. Standing committees. Rule 3 (b) of the Rules for the Foster Care Review Boards provides: “The state board may appoint such committees as it deems necessary to conduct its business.” State board members shall participate on standing committees of the state board; ~~which shall include, but are not limited to, the annual report, advocacy and continuing education committees.~~ Chairmen of standing committees of the state board, appointed by the state board chairman, shall serve in an ad hoc capacity.
45. Compensation. “State board members shall be compensated as determined pursuant to title 38, chapter 4, article 2.” A.R.S. § 8-515.04(F)

F. Local Foster Care Review Boards.

1. Membership. A.R.S. § 8-515.01(A) provides that local foster care review boards “~~---s~~[S]hall consist of at least five regular members. The judge may appoint one alternate member for each board if deemed necessary. The alternate ~~board~~ member shall receive all case correspondence and reports and shall serve on the review board in the absence of one of the regular members.”
- a. Diversity. A.R.S. § 8-515.01(A) provides: “~~---Each board shall,~~ to the maximum extent feasible, shall represent the various socioeconomic, racial and ethnic groups of the county in which it serves. A list of the members of each local board shall be sent to the supreme court.”
- b. Prohibited Appointments. A.R.S. § 8-515.01(B) provides: “The presiding juvenile judge shall not appoint a person employed by the division, ~~and any child welfare agency~~ or the juvenile court to a local board.”
2. Term. A.R.S. § 8-515.01(C) provides:

“On the appointment of a new local board, regular board members shall divide themselves by lot into three classes as nearly equal in number as possible. Members of the first class shall serve for a term of one year, members of the second class shall serve for a term of two years and members of the third class shall serve for a term of three years.” All subsequent local board members, including alternate members, shall serve for a term of three years, except if a member has been appointed to fill a vacancy occasioned other than by the expiration of a full term of office. The term of each member shall expire on the third Monday in January of the appropriate year. Members shall continue to serve until a successor is appointed. In the event a vacancy occurs on the local board, the judge shall appoint another person to serve the unexpired portion of the term.

- a. ~~“All subsequent local board members, including alternate members shall serve for a term of three years, except if a member has been appointed to fill a vacancy occasioned other than by expiration of a full term of office.” A.R.S. § 8-515.01(C)~~
 - b. ~~“The term of each member shall expire on the third Monday in January of the appropriate year. Members shall continue to serve until a successor is appointed.” A.R.S. § 8-515.01(C)~~
 - c. ~~“In the event a vacancy occurs on the local board, the judge shall appoint another person to serve the unexpired portion of the term.” A.R.S. § 8-515.01(C)~~
3. Officers. A.R.S. § 8-515.01(E) provides: “Each local board shall elect a chairman and vice chairman and other officers as it deems necessary.”
- a. ~~Local boards elect local chairmen and vice chairmen for one year. The local boards shall hold elections at the first meeting after the third Monday in January of each year. In the event that all board positions are not filled at that time, the board may vote to postpone the election until their next meeting. A local board may re-elect local chairmen and vice chairmen. Rule 1 of the Supplemental Rules of the State Foster Care Review Board provides:~~
 - Local chairpersons and vice-chair persons are elected for one year. Elections will be held at the first meeting of the local boards following the third Monday in January of each year. In the event that all board positions are not filled at that time, the board may vote to postpone the election until their next meeting. Local chairpersons and vice-chairpersons may be re-elected.
 - b. Rule 5(c) of the Rules of Procedure for the Foster Care Review Boards provides:
 - In the event that the chairman of a review board is unable to attend a review or to perform his duties at any particular time, the vice chairman ~~shall~~ will exercise the duties of the chairman until such time as the chairman can resume them. If neither the chairman nor the vice chairman is present, the chairman or vice chairman when acting as chairman shall designate a member as acting chairman.
4. Responsibilities. A.R.S. § 8-515.03(4) provides: “Local foster care review boards shall”:
- a1. ~~“Review within six months of placement and at least once every six months thereafter the case of each child who remains in out-of-home placement and who is the subject of a dependency action to determine what efforts have been made by the ~~division~~ department and the agency with which the child has been placed to carry out the case plan for the permanent placement of such child.” A.R.S. § 8-515.03(4)~~

- b2. "Allow a child's parents and grandparents to attend the local foster care review board's review of the case. The parent or grandparent may be accompanied at the review by an advocate of the parent's or grandparent's choice." ~~A.R.S. § 8-515.03(2)~~
- e3. "Review any case assigned by the juvenile court for early review of the case plan within sixty days after the removal of a child from that child's home." ~~A.R.S. § 8-515.03(3)~~
- d4. "Submit to the juvenile court within thirty days following the review its findings and recommendations regarding the efforts and progress made by the ~~division~~ department and agency to carry out the case plan, together with any other recommendations it chooses to make regarding the child." ~~A.R.S. § 8-515.03(4)~~ The findings and recommendations shall include the date of the next review. A copy of such findings and recommendations shall be sent to the division or the agency, if the juvenile court has awarded custody of the child to the agency, and to such other interested parties as the court may require.
- e5. "Encourage and facilitate the timely return of children to their natural parents or, if the board finds that one or more of the grounds listed in section 8-533 may exist, encourage the appropriate agency to initiate such procedures as would make the child eligible for adoption, followed by a maximum effort by the agency to place the child for adoption." ~~A.R.S. § 8-515.03(5)~~
- f6. "Encourage the ~~department~~ division and all agencies involved in placing children in out-of-home placement to exert all possible efforts to make arrangements for permanent plans for children for whom return to natural parents or adoption is determined to be infeasible or impossible." ~~A.R.S. § 8-515.03(6)~~
- g7. "Promote and encourage the ~~department~~ division and all agencies involved in placing children in foster care to maximize stability and family continuity for children in foster care by discouraging unnecessary changes in the placement of foster children and by recruiting foster parents who may be suitable and eligible as adoptive parents." ~~A.R.S. § 8-515.03(7)~~
- h8. "Assist the ~~department~~ division and agencies in informing natural parents, foster parents and other interested parties of their rights and responsibilities with respect to any child in out-of-home placement. Natural parents, foster parents and other interested parties may be involved in the review process when appropriate." ~~A.R.S. § 8-515.03(8)~~

9. “Make recommendations to the state board regarding foster care policies and procedures as they relate to the children assigned for their review.” A.R.S. § 8-515.03(9)
5. Attendance at Case Reviews. A local foster care review board may exclude any person attending a case review where the conduct of such person unreasonably interferes with the ability of the board to fulfill its duties.
6. Meetings. A.R.S. § 8-515.01(G) provides: “Each local board shall meet, at a place designated by the juvenile court, as often as it deems necessary to carry out the duties of the local board. A local board shall not meet less than twice annually.”
- a. Rule 1, Rules of Procedure for the Foster Care Review Board provides:
- Quorum. A review ~~shall~~ will be conducted with no less than three review board members, unless circumstances prevent three review board members from being present, and postponement of the case would cause undue hardship for ~~participants and~~ interested parties or delays in court proceedings. ~~In these circumstance~~ then a review can continue with two review board members with the permission of the review board ~~specialist coordinator~~ and the review board ~~chairman~~ chairperson. In no case may a review be conducted with less than two review board members present. A member of a local review board may serve as a substitute member on any local board.
- b. ~~A member of a local review board may serve as a substitute member on any local review board.~~ Voting. Rule 6, Rules of Procedure of the Foster Care Review Boards provides: “Actions of a review board shall be decided by a majority vote.”
- c. ~~Review board members who are foster parents may not participate as board members in the review of children who are in their own care.~~ Conflicts of Interest. Rule 8, Rules of Procedure for Foster Care Review Boards Provides:
- (a) Review board members who are foster parents may not participate as board members in the review of children who are in their own care. Such members may be heard by the board pursuant to Rule 5-a.
- (b) Any review board member who in the course of their past or present employment has made recommendations or approved recommendations regarding a child subject to review may not participate as a board member in the review of that child. Such member may be heard by the board pursuant to Rule 5-a.

- d. ~~Any review board member who in the course of past or present employment has made recommendations or approved recommendations regarding a child subject to review may not participate as a board member in the review of that child.~~

~~7. Actions of a review board shall be decided by a majority vote.~~

~~87. Training. A.R.S. § 8-515.01(D) provides: “A person shall not remain on a local board unless the person participates in the training established pursuant to ~~A.R.S. § section~~ 8-515.04.~~

~~98. Reimbursement. A.R.S. § 8-515.01(F) provides: “~~A~~Local board members shall be compensated pursuant to title 38, chapter 4, article 2.”~~

~~109. Cessation of Case Review. The local board shall cease reviewing cases when the child is no longer out-of-home and the court issues an order relieving the board, finalizing an adoption or dismissing a dependency petition.~~

G. Program Operations.

1. Records and Confidentiality.

- a. All state and county program staff and volunteers shall comply with A.R.S. § 8-807, §41-1959, Arizona Rules of Court, including, but not limited to Rule 123, Rules of the Supreme Court, Rule 47, Rules of Procedure of the Juvenile Court, ~~The Arizona Code of Judicial Administration~~, and administrative rules regarding confidentiality.
- b. A.R.S. § 8-519(B) provides: “Upon the request of a foster care review board, any record pertaining to a case assigned to such board, kept by the division or a child welfare agency, shall be furnished to the board.” Records obtained pursuant to A.R.S. § 8-519(B) shall not be reviewed by an outside agency unless a subpoena and an order of the presiding juvenile judge or designee has been issued.
- c. “All records and information in the possession of the foster care review board regarding children and their parents or relatives shall be deemed confidential, and shall be disclosed only pursuant to this article or by order of court.” A.R.S. § 8-519(C)
- d. All parties and participants, except children, shall receive a copy of the recommendations unless a case manager or local board requests that the court order the interested party not receive the documents.

e. Upon receipt of a subpoena, the ~~statewide program~~ manager shall ~~deliver~~ follow the requirements of ACJA Section 1-204: response to claims, summons and subpoenas. If it is determined that an in-camera inspection should occur the manager shall deliver a complete duplicate of the file to the presiding juvenile judge or designee for in camera inspection. No file shall be viewed without an order approving release of the file.

2. Assignment and Records. A.R.S. § 8-515.02(A. and B.) provides:

~~aA. Case Assignment~~—“The juvenile court in each county shall assign cases of children in out-of-home placement to a local board so that local boards are assigned an approximately equal number of children. In a case where a child resides in a county other than the resident county of his parents, the county of the child's original jurisdiction shall maintain jurisdiction unless, for valid reasons, the judge of such county transfers jurisdiction. A list of the cases so assigned shall be sent to the local board and the supreme court. ~~A.R.S. § 8-515.02(A)~~ For each case so assigned, the juvenile court shall also send to the local board:

~~b. Records Transfer.~~ “~~For each case so assigned, the juvenile court shall also send to the local board.~~

1. A copy of the case plan prepared by the division or agency.
2. A copy of the progress report or reports prepared by the division or agency pursuant to § section 8-516, subsection E.” ~~A.R.S. § 8-585.02(A)~~

~~eB. Early Review.~~—“Notwithstanding subsection A of this section, the juvenile court in each county in its discretion, or on the request of a mediator from the child welfare mediation program, may assign appropriate cases of children in out-of-home placement to a local foster care review board for early review of the case plan within sixty days after the removal of the child from the child's home.” ~~A.R.S. § 8-515.02(B)~~

~~H. Removal Review.~~

- ~~1. The judge shall appoint the removal review board members to the first board in counties with more than one local board.~~
- ~~2. The local foster care review board member who participates on the removal review team shall: “...Review each removal of a child which is expected to result in a dependency petition to assess options other than continued out-of-home placement including in-home services to the family. Such reviews shall be conducted before the dependency petition is filed.” A.R.S. § 8-822(3)~~

~~3. Local foster care removal review members shall complete removal review training prior to participation in a removal review and appointment to the removal review team.~~

III. Case Conferences Regarding Removal Review. Removal of Child from Foster Parent's Home; Requirements; Notifications; Review.

~~1. Review of removal from licensed foster parent. A.R.S. 8-515.05 provides:~~

~~A. Unless a child is removed from a licensed foster parent, excluding a shelter care provider and receiving foster parent, to protect the child from harm or risk of harm, to place a child in a permanent placement, to reunite siblings, to place a child in a kinship foster home, to place a child in a least restrictive setting, to place a child in a therapeutic setting or to place a child in accordance with the Indian Child Welfare Act (Title 25 United States Code § section 1915), the department shall inform the licensed foster parent of the department's intent to remove a child and place the child in another foster care placement. The department shall inform the licensed foster parent of the specific reason for the child's planned removal from the licensed foster parent. A.R.S. § 8-515.05(A)~~

~~2. Case Conference.~~

~~B. If the licensed foster parent disagrees with the removal, the licensed foster parent shall ~~inform~~ notify the department within twenty-four hours of being informed. If the licensed foster parent disagrees with the plan to remove the child and place the child in another foster home placement, the department shall convene a case conference to review the reasons for the removal. The licensed foster parent and a two members of the foster care review board ~~who~~ shall participates in a ~~removal review team~~ shall participate in the case conference. ~~A.R.S. § 8-515.05(B)~~ A child shall not be removed unless a majority of the members who participate in the case conference agree that removal is necessary.~~

~~3. Notification.~~

~~C. The department shall inform the licensed foster parent and the foster care review board of the time, date, and location of the case conference to review the planned removal. The case conference shall be held within seventy-two hours ~~of~~ after the licensed foster parent ~~informing~~ notifies the department that the licensed foster parent disagrees with the planned removal, excluding weekends and holidays. The child shall remain in the current placement pending the outcome of the case conference. A.R.S. § 8-515.05(C)~~

~~4. Continuation of Removal Process.~~

D. “If as a result of the case conference, it is the department’s continued intent to move the child pursuant to ~~§~~subsection A and the licensed foster parent continues to disagree and the child:

~~(1.)~~ Is in the court ordered physical custody of the licensed foster parent, a foster care review board member shall provide a recommendation to the court regarding the removal of the child before the change in physical custody. The child shall remain in the current placement pending a court order for removal.

~~(2.)~~ Is not in the physical custody of the licensed foster parent, the licensed foster parent shall be advised of the department’s conflict resolution process. The department shall expedite the conflict resolution process. The child shall remain in the current placement pending the outcome of the conflict resolution process.”

~~A.R.S. § 8-515.05(D)~~