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Overview

Young people who are pregnant or parenting often have unique challenges navigating Office of Refugee Resettlement (ORR) custody, especially if they become parents while in detention. This guide is intended to inform you of the rights of pregnant and parenting unaccompanied youth in custody and offer ideas for advocacy, drawing on current ORR policies and regulations.

The primary sources cited in this guide are the **ORR Foundational Rule**, 45 C.F.R. § 410.1000 *et seq.*, and the **ORR Unaccompanied Children Bureau Policy Guide**. Care providers may also have additional obligations to youth in detention under state laws and licensing regulations. See **Appendix: State Laws and Licensing Requirements**.

This resource provides guidance about how ORR and care providers should treat pregnant and parenting youth under current rules. That said, NCYL anticipates the Trump administration will quickly change ORR policies and may attempt to rescind the ORR Foundational Rule. We will update this resource accordingly as those changes happen.

This guide includes some references to the ORR Manual of Procedures (MAP). A recent version of the MAP can be found at acf.hhs.gov/e-reading-room.

This guide does not, and is not intended to, constitute legal advice in a particular case. Examples used throughout this guide are intended to illustrate possible fact scenarios for unaccompanied youth.

For information about your client's rights to sexual and reproductive health care services while in ORR custody, see **Guide: Sexual and Reproductive Health Rights in ORR Custody**.



Overview

What You Can Do

If your pregnant or parenting client is being mistreated or denied the care and services they deserve and are entitled to under the current rules, you can:

- Reach out to the National Center for Youth Law – We can help identify potential legal violations and brainstorm options for relief. Please contact Mishan Wroe (<u>mwroe@youthlaw.org</u>) and Rachel Smith (<u>rsmith@youthlaw.org</u>).
- Contact the program director and Federal Field Supervisor responsible for your client's facility – Identify the inappropriate treatment of the youth and/or their child, citing relevant laws, regulations, and policies, and make specific requests for your client.
- Make a referral for the appointment of a child advocate – The Young Center for Immigrant Children's Rights accepts referrals for the appointment of child advocates at theyoungcenter.org/refer-a-child.

- File a complaint with the UC Office of the Ombuds – The ORR Foundational Rule created a UC Office of the Ombuds with the authority to receive and investigate complaints regarding ORR's adherence to federal law and ORR regulations and standards. See 45 C.F.R. § 410.2002. Complaints can be submitted through the UC Office of the Ombuds website or by email at UC.Ombuds@acf.hhs.gov.
- In California, file a complaint with the CA Foster Care Ombudsperson The Ombudsperson has authority to receive and investigate complaints on behalf of children and youth in licensed ORR placements in California. Cal. Welf. & Inst. Code § 16164(a)(2), (3). Complaints can be submitted through the Ombudsperson's website. For assistance filing a complaint, contact NCYL.



Placement of Pregnant and Parenting Youth

How does an unaccompanied youth's status as pregnant or parenting affect their placement?

- In making placement decisions, ORR considers whether the unaccompanied youth is pregnant and/or parenting. See 45 C.F.R. § 410.1103(b)(15); Policy Guide § 1.2.1.
- Pregnant and parenting youth are among one category of youth ORR prioritizes for transitional foster care (TFC) placements. See <u>Policy Guide § 1.2.2</u>.
 Despite the policy to prioritize these youth, they are not guaranteed TFC placement.
- The youth's pregnancy or parenting status may require that they receive certain services or treatment. ORR is required to place the youth in a setting that is appropriate for their individualized needs. 45 C.F.R. § 410.1103(a); Policy Guide § 1.2.1.
- In several states, such as California, care providers must have a special license to care for pregnant and/or parenting youth. As a result, pregnant and parenting youth are often detained together in one of a handful of ORR shelters throughout the country or placed in transitional foster care.

Does ORR always keep parenting youth and their children together?

- ORR must "prioritize placing and keeping the parent and child together in the interest of family unity." 45 C.F.R. § 410.1108(a).
- ORR will accept placement for a parenting youth and their child, regardless of the child's immigration or citizenship status, because it is ORR's position that "it has custody of the unaccompanied child . . . and [] the unaccompanied child has custody of their child." 89 Fed. Reg. 34384, 34436.
- There are limited circumstances under which ORR may be permitted to separate a youth from their child. See
 Policy Guide § 1.2.7. Any separation of a parenting youth from their child requires prior authorization of ORR. See id. These circumstances are extremely rare. If ORR is contemplating separating your client from their child and you would like support in advocating against the separation, please reach out to NCYL.



Placement of Pregnant and Parenting Youth

Does my client's status as pregnant or parenting affect their ability to be placed in long-term foster care (LTFC)?

- Pregnant and parenting youth, like all youth in ORR custody, have the right to be "placed in the least restrictive setting" that is in their best interest. 8 U.S.C. § 1232(c)(2)(A); see also 45 C.F.R. § 410.1003(f); Policy Guide § 1.4.1.
- While ORR considers a youth's individualized needs when making LTFC referrals and
 placement decisions, see <u>Policy Guide § 1.2.6</u>, a youth's status as pregnant or parenting
 should not affect whether ORR refers the youth to LTFC. For example, it is inappropriate to
 decline to make an LTFC referral until a youth is no longer breastfeeding, or because care
 provider staff believe the youth will be better off parenting in the shelter setting.
- Unfortunately, there is an insufficient number of LTFC placements that are willing or able to accommodate pregnant and parenting youth, which means these youth may spend many months in an ORR shelter awaiting LTFC placement.



Family Integrity and Parental Autonomy

Immigrant youth who are parents, like all other parents in the United States, have a fundamental liberty interest in the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57, 65 (2000). The U.S. Constitution protects this interest through the Due Process Clause. Id. at 65-66. Neither the parent's nor the child's immigration or citizenship status affects the parent's constitutional interest in the care, custody, and control of their child.

Can care provider staff take a youth's child from them as punishment?

• ORR prohibits care providers from using or threatening to use "unfavorable consequences related to sponsor unification or legal matters" as a behavior management tool or using sanctions that adversely affect a youth's "emotional, or psychological well-being." 45 C.F.R. § 410.1304(a)(2)(i). Under these regulations, care provider staff must not threaten to take a youth's child from them, threaten the youth that they will be deported without their child, or take their child away as a behavior management tool.

^{1.} See Casey Family Programs, Resource List: What do child welfare leaders need to know about supporting families when caregivers are facing immigration-enforced detention or deportation?, February 2020, https://www.casey.org/media/20.07-QFF-SF-Immigration-resources_fnl.pdf (last accessed Dec. 17, 2024); see also, e.g., Ms. L. v. U.S Immigration and Customs Enforcement, 302 F. Supp. 3d 1149, 1164-65 (S.D. Cal. 2018) (finding that the right to family integrity applied to migrant parents separated from their children without a determination that they were unfit or presented a danger to their child).



Family Integrity and Parental Autonomy

What happens if my client and the care provider disagree over matters relating to their child's care?

- Parenting practices differ across cultures, and youth and care provider staff might not see
 eye-to-eye about what parenting methods are appropriate or effective. Care providers must
 treat young people with dignity and respect, and deliver services according to a youth's age,
 culture, and complex needs. 45 C.F.R. § 410.1003(a); id. § 410.1302(d). Because the
 parenting youth "has custody of their child," 89 Fed. Reg. at 34436, absent a compelling
 reason not to, care provider staff should defer to the youth's parenting choices.
- ORR policies do not directly address how care providers should navigate many of the issues that may arise when caring for parenting youth and their children. Experts suggest that foster care providers help parenting youth develop strong parent-child relationships by "[o]ffering opportunities to practice parenting skills in a supportive environment." 2 Supporting parenting youth requires "find[ing] the right balance in addressing their needs as young people, while respecting them as parents and emerging adults." Id.

Can child protective services remove a parenting youth's child from them?

- In many states, care provider staff are mandated reporters, which means state law requires
 them to report suspected child abuse or neglect. Sometimes, this results in care provider
 staff calling child protective services (CPS) to report incidents between parenting youth and
 their children. If CPS is contacted, they will follow their usual protocols to investigate and
 respond to the report.
- The procedures for investigating child abuse or neglect—including temporary removal of a child from their parent—vary by state. If your client may face a CPS investigation and you are looking for resources, please reach out to NCYL.

^{2.} Casey Family Programs, Strategy Brief: What strategies support pregnant and parenting teens in foster care?, July 2024, www.casey.org/media/24.07-QFF-SF-Pregnant-parenting-teens-update.pdf (last accessed Dec. 17, 2024).



Family Integrity and Parental Autonomy

What are my male client's rights as a parent of a child in an ORR placement?

- When two youth are placed in ORR custody together with their infant, the care provider will often assign the mother and child a room in the girls' section of the shelter, while the father is separated and placed in the boys' area.
- Care providers should provide consistent, frequent visitation between the father and child based on ORR regulations emphasizing family unity and your client's constitutional right to a relationship with his child. See 45 C.F.R. § 410.1108(a) ("[ORR] shall prioritize placing and keeping the parent and child together in the interest of family unity."); Troxel v. Granville, 530 U.S. 57, 65-66 (2000) (Due Process Clause of the U.S. Constitution protects parents' fundamental interest "in the care, custody, and control of their children"); Stanley v. Illinois, 405 U.S. 645, 658 (1972) (unconstitutional to presume unmarried fathers are unfit parents, under both Due Process Clause and Equal Protection Clause).
- If your male client is placed in a different ORR program than his child and the child's other parent, consider advocating for transfer to allow for physical visitation, based on your client's rights to family unity and integrity under ORR regulations and the federal constitution. See id. If transfer is not feasible or preferred, the care providers should allow consistent contact between the father and child through phone and/or video calls. See 45 C.F.R. § 410.1302(c) (10) (requiring care providers to arrange "[v]isitation and contact with family members").
- Keep in mind that ORR or the care provider could require verification of the relationship prior to allowing contact or visitation, but this should be completed without unnecessary delay.



Rights of Children of Unaccompanied Youth

What are the rights of my client's child while they are detained?

- ORR must provide "the same care and services" to an unaccompanied youth's child as it provides to other children, regardless of the child's immigration or citizenship status. 45 C.F.R. § 410.1108(b)(1); see also Policy Guide § 1.2.7. These services include proper physical care and maintenance, education and recreation activities, religious services, and contact with family members. See 45 C.F.R. § 410.1302(c).
 - For example, a child detained with one of their parents should be provided "at least 15 minutes of phone or video contact three times a week" with their other parent, whether they are in the United States or abroad. See id. § 410.1302(c)(10).

If my client's child is a U.S. citizen, can they receive public benefits?

 Yes. The care provider should submit the child's application for public benefits and services that are available to U.S. citizens, such as Medicaid. See 45 C.F.R. § 410.1108(b)(2); see also Policy Guide § 1.2.7.

Diego

Diego is a two-year-old in ORR custody with his mom, Carina. Diego's father lives in the United States. Care provider staff have not permitted Carina to speak to Diego's father due to disclosures she has made about their relationship, and he cannot be Carina and Diego's sponsor. Care provider staff should still facilitate consistent phone and/or video calls and visitation between Diego and his father, unless there is a specific safety concern, because he is entitled to the same contact with family members as all children in ORR programs.



What pregnancy or childbirth supports can I advocate for my client to receive?

- A trusted adult should speak with the pregnant youth to understand how they would feel best prepared for and supported during their pregnancy and childbirth.
 - Examples of supports some care providers have offered include: arranging prenatal, birthing, breastfeeding, and parenting classes; accommodating the youth's preferences regarding their physician's gender; hosting a baby shower; touring the hospital where the youth will deliver; creating a birthing plan; orienting the youth to their postpartum routine before delivery; having a loved one in the delivery room in-person or by video call; and having a staff person of the youth's choosing be present in the delivery room. Providing specialized support to pregnant youth aligns with a care provider's obligation to "deliver services in a manner that is sensitive to . . . the complex needs of each unaccompanied child." See 45 C.F.R. § 410.1302(d).
- Care providers must provide sufficient clothing and hygiene items to youth as their bodies change during and after pregnancy. See 45 C.F.R. § 410.1302(c) (1) (care providers must provide "appropriate clothing" and "feminine care items" for each unaccompanied youth).
- For youth whose preferred language is not English or Spanish, ask the youth whether the presence of an in-person interpreter at their medical appointments and childbirth would be supportive to them, and consider making such a request. See 45 C.F.R. § 410.1306(g) (care providers "shall ensure that unaccompanied children are able to communicate with physicians, clinicians, and healthcare staff in their native or preferred language, depending on the unaccompanied children's preference, and in a way the unaccompanied children effectively understand, prioritizing services from an in-person, qualified interpreter before using qualified remote interpretation services."); see also id. § 410.1306(a) (2).



Does my client have rights related to breastfeeding?

- Yes. Care providers may not discriminate against youth based on sex, which includes discrimination based on pregnancy and related conditions, such as lactation. See ORR Nondiscrimination Notice; 20 U.S.C. § 1681(a) ("Title IX").
 - ORR care providers are bound by Title IX's prohibition on sex-based discrimination because they receive federal funding and are "private organization[s]... principally engaged in the business of providing education, health care, housing, social services, or parks and recreation." See 20 U.S.C. § 1687(3).
 - So as to not discriminate against a youth who is lactating, care providers should offer breaks during class to express milk or breastfeed, access to online or remote classes, and changes to the youth's schedule. See A Better Balance, Pregnant or Parenting at School? Know Your Rights, www.abetterbalance.org/resources/pregnant-or-parenting-at-school-know-your-rights/.

- Regulations promulgated under Title IX have been the subject of recent litigation. For information about current rules, visit the <u>A</u> <u>Better Balance</u> and/or <u>The</u> <u>Pregnant Scholar</u> websites.
- Unaccompanied youth also have "a reasonable right to privacy" under the Foundational Rule. 45 C.F.R. § 410.1302(c)(14). A youth's reasonable right to privacy should encompass matters of personal autonomy such as breastfeeding.



What if care provider staff do not give my client sufficient time during the day to breastfeed?

- The time an infant may need to breastfeed depends on several factors, including their age and the parent's milk supply.³
- Care provider staff should permit the parenting youth, in consultation with their physician, to determine how much time they need to nurse their child. This practice is consistent with the youth's constitutional right to make decisions concerning the care of their child, their reasonable right to privacy in ORR custody, as well as the care provider's obligation to deliver services in a manner that is sensitive to the youth's complex needs. See Troxel v. Granville, 530 U.S. 57, 66 (2000); 45 C.F.R. § 410.1302(c)(14), (d).

3. Nemours KidsHealth, *Breastfeeding FAQs: How Much and How Often?*, November 2019, www.kidshealth.org/en/parents/breastfeed-often.html (last accessed Nov. 26, 2024) (also available in Spanish).

Who decides how long a youth's postpartum leave from school will be?

 The youth's physician, in consultation with the youth—not ORR or care provider staff—should determine when it is appropriate for the youth to return to a full school day. See MAP § 3.3.5 (Academic Educational Services).

Carmen

Carmen gave birth while in ORR custody and has been breastfeeding and learning how to pump. Her ORR shelter provides her educational services on campus. When Carmen is ready to return to her normal routine of going to classes, she should be given breaks during classes to express milk or directly breastfeed, as well as a clean and private lactation space. Care provider staff cannot force Carmen to wean off breastfeeding to return to her normal routine.



What if my client's pregnancy or postpartum experience requires specialized support?

- Some youth may require specialized care during or after pregnancy, for example, for preexisting conditions that affect pregnancy, or for their newborn with medical conditions. Some youth may also benefit from specialized support such as lactation counseling.
- ORR and care providers must facilitate access to medical specialists and must transfer or transport youth, as appropriate, to receive specialized care. See 45 C.F.R. § 410.1307(b)(1), (c); see also Policy Guide § 3.4.
- While some fields may have few providers that accept ORR's billing system, care providers holding pregnant and parenting youth for prolonged periods should make efforts to establish connections with specialists (e.g., lactation consultants). See generally 45 C.F.R. § 410.1307(b)(1), (c); Policy Guide § 3.4.9.



Release of Pregnant and Parenting Youth

Can ORR tell my client's sponsor that she is pregnant?

- ORR federal staff may inform a
 potential or approved sponsor of a
 youth's pregnancy status to confirm
 the sponsor "can provide the financial
 and emotional support needed by the
 [youth] associated with carrying the
 pregnancy to term, giving birth, and/or
 parenting." Policy Memorandum:
 Medical Services Requiring Heightened
 ORR Involvement at 3.
- ORR must document, in the youth's case file: (1) a good faith finding that sponsor notification is necessary, and (2) attempts to first secure the youth's consent to the disclosure. Policy Memorandum: Medical Services Requiring Heightened ORR Involvement at 3.
- For information about sponsor notification of abortion decisions, see <u>Policy Memorandum: Medical Services</u> <u>Requiring Heightened ORR Involvement</u> at 3.

Pilar

Pilar learned that she was pregnant at her Initial Medical Exam. She was informed of her pregnancy options and decided to continue the pregnancy. Pilar had arrived in ORR custody planning to be released to her brother, who doesn't yet know that she is pregnant. A trusted care provider staff, like her clinician or case worker, should sit down with Pilar to talk about informing her brother that she is pregnant. If Pilar wants to tell him herself, a clinician could set up a family session or other safe space for Pilar to have support during that conversation. If Pilar doesn't want to tell her brother, care provider staff should speak with her about why they have to ensure he will support her. These conversations must be documented in her case file with ORR's good faith finding that notifying her brother is necessary, before staff can inform Pilar's brother themselves.



Release of Pregnant and Parenting Youth

Will my client's child be released to the same sponsor the youth is released to?

- ORR will identify a sponsor for the unaccompanied youth's child. It is ORR's policy that "[i]n most instances, it is in the best interests of the child and their biological child to be released to the same sponsor." See Policy Guide § 2.2.1; see also 45 C.F.R. § 410.1108(a) (ORR "shall prioritize placing and keeping the parent and child together in the interest of family unity.").
- Releasing a youth and their child to different sponsors against the youth's wishes would likely violate the youth's constitutional right to family integrity.
 See Troxel v. Granville, 530 U.S. 57, 67-70 (2000) (absent finding of parental unfitness, the state cannot substitute its judgment of what is in the child's best interests for the parent's judgment).

Can my client's partner in the United States be their sponsor?

- Potential sponsors who are the child's spouse or adult partner may be considered on a case-by-case basis.
 The case manager will clarify the age of consent laws in the youth's country of origin and in the state to which the youth would be potentially released.
 The case manager will also assess whether the relationship was coerced or forced. For more information, see MAP § 2.2.4 (Required Documents for Submission with the Application for Release).
- A youth's minor partner cannot be their sponsor. An adult in the minor partner's family may apply to be the youth's sponsor.
- For information about youths' rights in the sponsorship process, see <u>Guide</u>: <u>Rights of Children in ORR Custody to</u> <u>Prompt Release</u>.



Release of Pregnant and Parenting Youth

How does pregnancy status affect a client's release to an approved sponsor?

- ORR must release youth to a suitable sponsor without unnecessary delay. 45 C.F.R. § 410.1201(a).
- When ORR plans to release a youth to a sponsor, it must "assist without undue delay in making transportation arrangements." 45 C.F.R. § 410.1401(b). If a pregnant youth's sponsor has been approved and transportation is available and desired by the youth, ORR and the care provider should not delay in making transportation arrangements.
- A trusted adult should discuss with the pregnant youth the advantages and disadvantages of giving birth while in ORR care versus after unification with the sponsor.
- After 36 weeks of pregnancy, medical clearance may be required for a pregnant youth to be reunited with a sponsor by air travel. See <u>Policy Guide § 3.4.8</u>.
- After childbirth, ORR may require that the infant is medically cleared prior to release to the sponsor.

Appendix

State Laws and Licensing Requirements

ORR care providers must comply with all child welfare laws and regulations in the state where they are located. 45 C.F.R. § 410.1302(b); Policy Guide § 3.1. Below are excerpts of relevant state licensing requirements for California, Texas, and Florida, three states where pregnant and parenting youth have historically been detained and where specific regulations apply to care providers for these populations. Texas and Florida do not permit licensing of care providers holding unaccompanied youth, but care providers must still comply with state licensing requirements under ORR regulations. See 45 C.F.R. § 410.1302(a), (b).

For assistance identifying child welfare laws and licensing requirements in your state, contact NCYL.

California

California's Foster Youth Bill of Rights provides robust protections for youth in out-of-home care. See Cal. Welf. & Inst. Code § 16001.9(a); Cal. Health & Safety Code § 1530.91(c) (stating that Cal. Welf. & Inst. Code § 16001.9 applies to children in ORR programs). These rights and other protections are outlined in group home licensing regulations.

Care providers must:

- Exercise the reasonable and prudent parent standard with youth in custody. Cal. Code Regs. tit. 22, § 84067(a). This means that the care provider must consider the youth's maturity and the importance of encouraging the youth's emotional and developmental growth when making decisions about the youth. See id. § 84067(b).
- Offer daily time for the parenting youth to devote individual attention to their child. Id. § 84279(a)(3)(G).
- Provide direct care and supervision of the youth's child when the parenting youth is unavailable. Id. § 84078(c).
- Provide access to reproductive and sexual health care, with reasonable promptness, that meets the youth's needs. Cal. Welf. & Inst. Code § 16001.9(a)(22)(A); see also Cal. Code Regs. tit. 22, §§ 84072(d)(25), 84075(e).

For more information about protections for youth detained in California, visit fosteryouthhelp.ca.gov.

Appendix

State Laws and Licensing Requirements

Florida

Care providers must provide pregnant and/or parenting youth with:

- Education on topics such as prenatal care, childbirth, healthy parenting practices, safe sleep, and child development.
- Clinical services to address the parentchild relationship.
- Daycare so that the parenting youth may attend school.
- Supports and resources to allow the youth to be successful with their education and with caring for their child.

Fla. Admin. Code r. 65C-46.017. Florida care providers must also offer all youth daily time for privacy. Fla. Admin. Code r. 65C-46.008(5)

Texas

Care providers for pregnant youth in Texas are required to "[e]nsure information, training, and counseling is available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth" and provide pregnant youth with "nutritional counseling and guidance." 26 Tex. Admin. Code § 748.1821.

For parenting youth, Texas regulations require that "[a]n adolescent parent [] provide most of the care for her child," and that caregivers must be available "as a resource and support." Id. § 748.1825. When the parenting youth is unavailable, the care provider is responsible for that child as if they were in its care. Id. Texas regulations also discuss treatment of infants and toddlers. See id. §§ 748.1741-1767; 748.1791-95. For example, toddlers must be provided "daily opportunities for outdoor play," opportunities for language and social/emotional development, and "opportunities to develop self-help skills." Id. § 748.1795.



Resources

For technical assistance related to youth in ORR custody, contact Mishan Wroe (mwroe@youthlaw.org) and Rachel Smith (rsmith@youthlaw.org) at NCYL. Below is a list of additional resources that may be useful to you and/or your client when navigating pregnancy and parenting in detention.

For information about your client's rights to sexual and reproductive health care services while in ORR custody, see <u>Guide:</u> <u>Sexual and Reproductive Health Rights in ORR Custody</u>.

Parenting Support

Zero to Three: Resources for Parents

zerotothree.org/resources/for-families

(English/Spanish)

Printable articles on child development and parenting topics.

National Maternal Mental Health Hotline 1-833-852-6262 (24/7) (English/Spanish, with interpreters for other languages)

Postpartum Support International Helpline 1-800-944-4773 (8am-11pm ET) (English/Spanish)

Lactation Support

National Women's Health and Breastfeeding Helpline t1-800-994-9662 (9am-6pm ET, Mon.-Fri.) (English/Spanish)

First Droplets

firstdroplets.com (English/Spanish) Videos with demonstrations about lactation topics such as what to expect, pumping, and milk supply.

Lactation Education Resources

<u>lactationtraining.com/resources/handouts-parents</u> (English/Spanish/Chinese)

Clinic Locator

Planned Parenthood - Find a Health Center plannedparenthood.org/health-center



Resources

For Advocates

Justice for Young Families Principles & Praxis Booklet

californialatinas.org/resources/j4yf-materials

This resource from California Latinas for Reproductive Justice outlines principles for advocates for parenting youth and society at large to embrace, such as upholding the self-determination and dignity of young people and honoring every young person's right to parent their child.

Pregnant or Parenting at School? Know Your Rights

abetterbalance.org/resources/pregnant-or-parenting-at-school-know-your-rights

This resource from A Better Balance describes accommodations that may be available to youth who return to school while lactating. Please keep in mind that this resource is not specific to ORR custody.