



First Nations of Southern Manitoba CFS Authority

Volume 1: Agency Standards Chapter 5: Foster Homes Section 6: Removing Foster Children

Effective Date: April 26, 2010

Introduction

This section contains policy and standards pertaining to removal of a foster child from a foster home. It applies to child and family services agencies and their mandating authorities and to licensed foster homes.

Legislation

The Child and Family Services Act

Subsection 2(1) of *The Child and Family Services Act* defines *best interests* of a child and lists criteria that must be considered in making a decision about a child. Other than proceedings to determine whether a child is in need of protection, the best interests of a child must be the paramount consideration. Subsection 8(1) requires foster homes to be licensed (see Section 1.5.2, [Licensing and Licensing Appeals](#)).

Section 51 of the Act pertains to the removal of a child in care from the person with whom the child was placed.

- Subsection (1) gives agencies the authority to remove a foster child if considered in the child's best interests to do so.
- Subsection (2) lists the circumstances when a foster child can be removed from a foster home prior to a final decision being made if foster parents object to removal of a child.
- Subsections (3) and (4) give foster parents a right to request a review of a decision to remove a child by the executive director of the placing agency and reconsideration by the chief executive officer of the mandating authority.
- Subsections (5) and (6) give foster parents the right to an independent appeal and provides for the appointment of an adjudicator by the minister.

Foster Parent Appeals Regulation

The *Foster Parent Appeals Regulation* sets out the procedures and timelines for removing a child under section 51 of the Act. The following table highlights procedures and timelines for foster parents, the placing agency and the agency's mandating authority.

Section 1.5.6 Removing Foster Children

Procedures and Timelines for Removal of a Child from a Foster Home

Section	Provision	Timeline
2	An agency must give foster parents: written reasons for its decision to remove a foster child; written notice of their right to a review, reconsideration and appeal; and a copy of this regulation.	2 days
3	Foster parents may object to a decision to remove a foster child by filing a written request for a review with the executive director of the agency.	12 days
4(1)	The executive director must offer the foster parents, in writing, an alternative process or Alternative Dispute Resolution (ADR) to resolve their dispute with the agency.	7 days
4(1.1)	Foster parents must advise the agency whether they agree to the ADR process.	15 days
	Delays may be necessary within the ADR process if a child protection investigation is ongoing or pending. The ADR process must be resumed immediately after the conclusion of the investigation.	
4(2)	Foster parents and the agency may resolve their dispute through an alternative process. If not, either party may advise the executive director accordingly (see <u>Adhering to Reasonable Timelines</u>)	
	The person who chaired the alternative dispute resolution will provide the results to the executive director, the foster parent and the agency's mandating authority.	5 days
5	The executive director must review the decision to remove the foster child if the foster parent did not agree to an alternative process or it was unsuccessful. The executive director must also give a copy of the decision to the foster parents and the agency's mandating authority.	7 days
6(1)	If not satisfied with the decision of the executive director, foster parents may request, in writing, a reconsideration by the senior executive officer of the agency's mandating authority.	7 days
6(2)	The executive director must provide all documents considered when reviewing the decision to remove a foster child, to the senior executive officer of the authority in accordance with section 5(1.1)	7 days
6(3)	The senior executive officer of the authority must make a decision in accordance with subsection 51(4) of the Act and give a copy to the agency and the foster parents	30 days*
7	If not satisfied with the decision of the senior executive officer, the foster parents may file a written notice of appeal to the Child and Family Services Division.	14 days
8	The parties to the appeal are the foster parents and the agency that removed the foster child.	NA
9	The director (Child and Family Services Division) must give a copy of the notice of appeal to the agency and its mandating authority and request the minister to appoint an adjudicator.	7 days

*Under certain circumstances this timeline may not be reasonable and as such the Southern Network will notify the Child and Family Services Division requiring an extension.

Section 1.5.6 Removing Foster Children

Sections 10 and 11 of the regulation pertain to the appointment of adjudicators. Sections 12 through 20 apply to procedures and timelines with respect to adjudication hearings and decisions.

Policy

Reasons for Removing a Foster Child

A decision to remove a child from a placement must be based on the best interests of the child. A balanced approach is needed, considering all relevant factors listed in [subsection 2\(1\) of *The Child and Family Services Act*](#). Both agency staff and care providers are expected to focus on the needs of the child.

[Section 51](#) of the Act reflects the important role foster parents play in the care of children in care. It applies when a foster parent objects to a decision to remove a child. Foster parents have a right to request a review of a placing agency's decision to remove a foster child and a reconsideration of an agency's decision by its mandating authority, and to appeal the decision of an authority to an adjudicator appointed by the minister. Unless the criteria listed in [subsection 51\(2\)](#) of the Act apply, a child remains in a foster home until a final decision is made according to this section.

Section 51 does not apply when a foster parent does not object to the removal of a child. However, the best interests of a child remain the paramount consideration. Appropriate reasons for removing a child include but are not limited to the following:

- Foster parents are no longer able to care for a foster child for personal or family reasons.
- A foster child has special needs that require more intensive care and supervision than a foster home can provide even with additional support and respite services (see Section 1.5.5, [Support and Respite](#)).
- An agency has concerns about the care a specific foster child is receiving despite open communication with and support to the foster parents. Concerns may be due to such things as:
 - a lack of understanding of the child's needs and developmental stages
 - difficulty in managing the child's behavior
 - inability to support a plan with respect to birth family contact
 - a lack of opportunity for culturally appropriate experiences for the child

Unless there are child protection concerns that necessitate immediate removal, pre-planning and involvement of the licensing agency are essential in reducing the need for abrupt moves of children from foster homes.

Alternative Dispute Resolution

Section 4(1) of the [Foster Parent Appeals Regulation](#) requires an agency to offer alternative dispute resolution (ADR) in writing within seven days of receiving a request from a foster parent to review a decision to remove a child. Section 4(1.1) of the [Foster Parent Appeals Regulation](#) allows up to 15 days for a foster parent to advise whether they agree to the process. Agencies are required to have written ADR policies and procedures developed in consultation with their mandating authorities. The regulation allows agencies and mandating authorities to employ culturally appropriate approaches to ADR.

Section 1.5.6 Removing Foster Children

ADR is defined as a non-adversarial way of resolving disputes. It is an alternative to resolving a dispute through an administrative or adjudicative process. It looks at needs, interests, and solutions, and can promote healing. It must be voluntary, timely, confidential, balanced, fair and respectful. When a dispute is resolved through ADR, there is no need for the remaining steps of the appeal process described under [Legislation](#) in this section.

In addition to resolving the dispute between the placing agency and the foster parents, ADR may also result in a better understanding of the strengths of the home by the case manager and, when applicable, acceptance by the foster parents of an agency's decision to remove a child.

Adhering to Timelines

Foster parents, agencies, authorities and the Child and Family Services Division have a statutory obligation to act in the best interests of a child. In the context of [section 51](#) of *The Child and Family Services Act* and the *Foster Parent Appeals Regulation* (see [Legislation](#) in this section), best interests requires all parties involved to follow timelines in the Act and regulation and to expedite the process.

In addition to the specific timelines in regulation, the [standards](#) in this section require all parties to a section 51 review to adhere to reasonable response times. Delays may be necessary. For example, the alternative dispute resolution (ADR) process may require more time pending a child protection investigation or when a child protection investigation is ongoing.

When there is undue delay caused by an agency, a foster parent has the option of complaining to the agency's mandating authority under clause 4(1)(f) of *The Child and Family Services Act* (see Section 1.7.3, [Complaint Review Process](#)).

Placing Agency Responsibilities

The policy statements in this part are based on and complementary to the duties of agencies set out in the *Foster Parent Appeals Regulation*.

Informing Foster Parents – When serving notice on foster parents under subsection 2(2) of the regulation, placing agencies must inform them on how to initiate reviews, reconsiderations and appeals and where to send written requests and appeals.

Informing and Involving Managing Agencies – When the foster home is managed by another agency (see definition of [managing agency](#) under Terminology in 1.5.0), a placing agency may rely on an assessment by and recommendations from the managing agency in making a decision to remove a foster child. The placing agency must inform the managing agency of its decision and involve the managing agency as necessary in planning for the removal (see Managing Agency Responsibilities below).

Informing and Involving Licensing Agencies – When the foster home has been licensed by another agency, the placing agency must provide information on its decision and the outcome to the licensing agency in a timely manner. It is the responsibility of the licensing agency to consider whether a review of the foster home license is indicated (see License Suspension or Cancellation below).

Section 1.5.6 Removing Foster Children

Managing Agency Responsibilities

When a foster home is managed by an agency or service organization on behalf of a licensing agency (see [Managing Agencies](#) in Section 1.5.1, Resource Management), responsibilities of the managing agency with respect to a placing agency's decision to remove a foster child include the following:

- identifying concerns regarding the care and supervision of a child and reporting them to the placing agency
- participating in the alternative dispute resolution process at the request of the placing agency or foster parents
- participating in reviews, reconsiderations and adjudications at the request of the placing agency or foster parents

Suspending or Cancelling a Foster Home License

Foster parents have a right to appeal a decision to remove a child under [section 51](#) of *The Child and Family Services Act* and the [Foster Parent Appeals Regulation](#) without fear of their license being suspended or cancelled.

Suspension or cancellation of a foster home license should not be considered unless the child is found to be in need of protection or section 15 of the [Foster Homes Licensing Regulation](#) applies. The decision to remove a foster child is a separate process specific to the best interests of the child.

At the point a foster home license is suspended or cancelled, section 51 of the Act no longer apply as the foster home is no longer licensed.

Standards

1. Deciding to Remove a Foster Child

- a. Where there is a plan to move a child from a foster home placement, the case manager will amend the child's care plan to include the following:
 - A review of the child's progress in the foster home preferably with the active involvement of the foster parents (see [Standard 7](#) in Section 1.1.2, Assessment) and the foster home worker or coordinator (see [Standard 5](#) in Section 1.1.3, Planning and [Standard 8](#) in Section 1.1.5, Evaluation)
 - The written reasons for the plan to move the child
 - The appropriateness of the move in accordance with the child's stage of development, including an assessment of the risk of such a move
 - An assessment of the degree of attachment to the caregiver
 - An overview of the new placement being proposed
- b. The amended care plan must be approved and signed off by the case manager, the supervisor, and the supervisor's supervisor. This provides an additional level of review of the plan to move a child, and will strengthen good case planning for children.

Section 1.5.6 Removing Foster Children

- c. No child shall be moved from a foster home placement without such a care plan, except where criteria listed in [subsection 51\(2\) of The Child and Family Services Act](#) applies and requires the immediate removal of a child, and/or where the court has ordered a child to be moved.
- d. If the decision is to proceed with removing the child from the foster home placement, the case manager prepares the documentation required under subsection 2 of the [Foster Parent Appeals Regulation](#).
- e. Such an amended care plan must be completed anytime a foster home placement move is proposed.
- f. The child's care plan belongs to the agency. The agency may, based on the best interests of the child and based on a 'need to know', share portions of the care plan with the child, and/or the child's birth family, and/or the child's foster family, and/or other collaterals, in accordance with the provisions of the CFS Act.

2. Alternative Dispute Resolution (ADR)

- a. When a placing agency offers an alternative process to resolving a dispute regarding removal of a foster child (see section 4 of the [Foster Parent Appeals Regulation](#)), foster parents make a decision to accept or reject the offer within 15 days from the date it is received.
- b. If a dispute between foster parents and a placing agency regarding a decision to remove a foster child is not resolved successfully through alternative dispute resolution, the person who chaired the ADR process reports the results to the executive director of the agency, the foster parents and the senior executive officer of the authority within 5 working days from the date the parties agree to discontinue the process. The supervisor may rely on the case manager to report the results to the foster parents.

3. Recording Decision to Remove Foster Child

- a. When a decision is made to remove a foster child, the case manager records the reasons for, actions taken and outcomes in the child-in-care record (see [Case Categories](#) in Section 1.7.1, Service Records).
- b. When applicable, the case manager notifies the person or agency responsible for licensing the home of the reasons and outcomes.

4. Tracking Reviews, Reconsiderations and Appeals

- a. The agency maintains an administrative record to monitor and track the progress of a request from foster parents to review a decision to remove a child. The record is used to:
 - Ensure timelines required under [section 51 of The Child and Family Services Act](#), the [Foster Parents Appeal Regulation](#) (see [Legislation](#) in this section), and the [standards](#) in this section are followed
 - When applicable, document steps taken to resolve the issue through alternative dispute resolution and the results of the process

Section 1.5.6 Removing Foster Children

- When applicable, assist in the preparation of documents required by the agency's mandating authority to reconsider the agency's decision and by an adjudicator appointed by the minister.

5. Reconsideration by Mandating Authorities

- a. When foster parents submit a written request to an agency's mandating authority pursuant to section 6 of the *Foster Parent Appeals Regulation*, the senior executive officer of the authority makes a decision in accordance with [subsection 51\(4\)](#) of *The Child and Family Services Act* and gives a copy of the decision, with reasons, to the foster parents and the agency within 30 days from the date the written request was received.
-