



HB 214 Foster Care Reform Law Implementation Guide for OACCA Members

April, 2008

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BACKGROUND

Following the tragic death of Ohio foster child Marcus Fiesel by his own foster parents, many policy makers, advocates, and individuals in the media looked for answers. At the state level, State Senator Tom Niehaus and State Representative Jeff Wagner formed the Foster Care Reform Legislative Workgroup. This workgroup was tasked with developing recommendations for state legislation that would reform and improve the state foster care system of laws.

The workgroup was comprised of leaders from public and private children's agencies and associations, state departments, the Attorney General's office, foster caregivers and foster children, and both Democrat and Republican legislators. OACCA and members of its Foster Care Advisory Committee were leaders in this workgroup. This group produced an extensive list of recommendations, which includes strengthening oversight and training requirements for foster caregivers. These recommendations are the underpinnings for HB 214, which focuses on training requirements and public records, and SB 163, which focuses on oversight of foster parents.

On May 8, 2007, Representative Wagner, introduced HB 214 to the Ohio House of Representatives. It was referred to the House Juvenile and Family Law Committee, where OACCA and its members testified in support of the bill. Before the bill reported out of the committee, it was amended to remove controversial language that exempted identifying foster parent information from Ohio's public records law. Between June and October of 2007, OACCA and its members began a strong advocacy effort with state legislators and the Governor's office to urge the Ohio House to restore the foster parent information exemption.

While HB 214 was on the House floor, Representative Wagner courageously offered an amendment to the bill that restored the public records exclusion language (which OACCA fully supported). The amendment was narrowly supported and the bill was voted out of the House on October 10, 2007 and referred to the Ohio Senate. Because of Representative Wagner's strong leadership on HB 214, OACCA awarded him the Virginia Colson Award for Children and Families in 2007.

Note: During October 2007, OACCA held two forums across Ohio to discuss the public records issue with private and public children's agency staff.

In the Senate, HB 214 was assigned to the Senate Health Human Services and Aging Committee, where OACCA and its members testified in full support of the bill. It reported out of the committee to the Senate floor with full support. After several weeks of strong advocacy efforts by OACCA to Ohio Senators, the Senate vote unanimously to pass HB 214 on February 5, 2008. Governor Strickland signed the bill into law on February 13, 2008, with an effective date of May 15, 2008.

With the passage of HB 214, the Ohio Department of Job and Family Services (ODJFS) was tasked to develop state administrative code rules to implement the new law. On February 28, 2008, ODJFS filed three proposed rules (5101:2-5-33, 5101:2-5-38, 5101:2-5-40) with the Joint Committee on Agency Rule Review. ODJFS made minor changes to the first and third rule and refiled the rules with those changes on March 28 and March 31, 2008. The public hearing was April 2, 2008, in which no one testified. The rules are expected to go into effect on May 15, 2008*, which is the same day the law goes into effect.

Note: View the HB 214 law [here](#) and HB 214 rules on the Ohio Register website [here](#).

* The pre-placement training hour requirement expansion for family foster parents does not go into effect until January 1, 2009.

SUMMARY OF LAW

Overview

- Increases from 24 to 36 hours the amount of preplacement training for foster caregivers providing family foster homes.
- Allows a foster caregiver to fulfill up to 20% of the required amount of continuing training by teaching training classes or mentoring other foster caregivers (see qualifying criteria on page 7).
- Alters the timing and form of reimbursement to foster caregivers for completing preplacement and continuing training.
- Removes, generally, the names, documentation, and other identifying information regarding a foster caregiver or prospective foster caregiver from the definition of "public record."
- Makes some foster caregiver identifying information a public record only if the caregiver's certificate has been revoked or has been convicted of, pleaded guilty to, or indicted or otherwise charged with certain offenses.
- Specifies that non-identifying foster care statistics, including the number of foster caregivers and foster care certificate revocations, are public records.
- Establishes a procedure by which two county boards of mental retardation and developmental disabilities must reach an agreement regarding how to provide services to a foster child who moves from one county to another.
- Requires the Ohio Department of Job and Family Services (ODJFS) to partner with the Ohio Department of Mental Retardation and Developmental Disabilities to offer joint cross system briefings to better educate the professionals of both systems.
- Permits a juvenile judge to enter into an agreement with ODJFS for the purpose of reimbursing the court for specified foster care related costs incurred on behalf of a child who has been determined to be at serious risk of removal from the home and for whom the court has undertaken a plan of reasonable efforts to prevent such removal.
- Requires the Director of ODJFS to appoint two current certified foster caregivers as additional members of the Ohio Child Welfare Training Program steering committee.
- Allows ODJFS to seek federal approval through the United States Department of Health and Human Services to include within funding under Title IV-E of the Social Security Act an additional category of foster care certification for placements in which the child has an existing relationship with the foster caregiver.
- Reenacts the Interstate Compact *on* the Placement of Children that was repealed by Am. Sub. S.B. 238 of the 126th General Assembly as a continuation of that interstate compact until the new Interstate Compact *for* the Placement of Children takes effect.

Public Records

After the Marcus Fiesel tragedy, the Cincinnati Enquirer issued a public records request to ODJFS for a complete list of foster caregivers. After their request was denied, the Enquirer sued ODJFS for this information. ODJFS's interpretation of state law (ORC 5101.29) at that time was that foster parent information is confidential. Regardless of the result of the suit, the foster care reform workgroup decided a year ago that state law should clearly show that foster caregiver information is confidential and not public record. Language was written into HB 214 as introduced that clearly makes this information not public record. But this language was stripped while the bill was in the House Juvenile and Family Law Committee. As a result, after much dissent on behalf of private and public children's agency staff throughout the state, some of which was discussed at two separate forums held by OACCA in October 2007, the language that exempts foster parents from the public records law was amended back into the bill in a *compromised version* before being voted out of the House of Representatives.

The compromise (which is now state law) permits some identifying information of foster parents to become public record if the foster caregiver has had their foster caregiver certificate revoked or, after receiving a current or current renewed certificate has been convicted of, pleaded guilty to, or indicted or otherwise charged with any offense that would preclude the person from being appointed or employed as a person responsible for a child's care in out-of-home care. It is important to note that revoking a foster care certificate ([OAC 5101:2-5-26](#)) is a disciplinary procedure that is not the same as allowing a license to lapse.

The compromise requires the release of the following foster caregiver information under those certain circumstances:

- The foster caregiver's name, date of birth, and county of residence;
- The date of the foster caregiver's certification;
- The date of each placement of a foster child into the foster caregiver's home;
- If applicable, the date of the removal of a foster child from the foster caregiver's home and the reason for removal unless release of such information would be detrimental to the foster child or other children residing in the foster caregiver's home;
- If applicable, the date of the foster care certificate revocation and all documents related to the revocation unless otherwise not a public record.
- The act also specifies that non-identifying foster care statistics, including the number of foster caregivers and foster care certificate revocations, are public records. (R.C. 5101.29(D)(2).)

While HB 214 was in the House and Senate, there were several editorials in Ohio newspapers that urged the state legislature to open up all (or more) foster parent records to public inspection. To address these concerns, we circulated this information to newspapers and to state legislators:

Misconceptions

Does making all foster caregivers information public add anything to the quality of our system or somehow improve our ability to “track” foster parent data? No. ODJFS and county departments of children services already have a simple tracking method that can look at specific pieces of data about foster caregivers to determine if they encountered problems as a foster caregiver. In fact, SB 163 (Sen. Niehaus) completely overhauls how ODJFS screens foster caregiver applicants and current caregivers. The bills add training requirements and even establish a retained applicant fingerprint database so that ODJFS can provide better oversight over foster caregivers. Therefore, the state of Ohio has, and will continue to, step up to the plate to provide more effective oversight to the foster care system. It is the responsibility of ODJFS to do this, not Ohio newspapers.

Does making all foster caregivers information public act as a deterrent to child maltreatment? No. This argument is completely flawed. There is no logic in suggesting that “oversight” by newspapers of foster caregiver records would decrease episodes of child abuse or maltreatment in foster homes. Ohio’s current rate of foster youth who experience maltreatment (broadly defined) while living in out of home care is 0.43%. Moreover, of all the options to prevent child abuse and lapses in foster homes, making identifying information about foster caregivers public is definitely not the *best* option regardless of how you look at this issue. Instead, better oversight that weeds criminals and bad parents out of the system and increases foster caregiver training requirements is what will ultimately lower instances of abuses.

Does making all foster caregivers information public potentially threaten child and foster family safety? Yes. Over a dozen individuals from OACCA member agencies have told us stories of biological parents threatening their children’s foster caregivers and the children themselves. In the House Juvenile and Family Law Committee, there was testimony from foster care providers and law enforcement on this issue. Clearly, this is already happening too often. Giving biological parents more clues to where their removed children are living in foster homes will definitely increase the number of these threatening situations, increase stress on foster families, and ultimately weaken the system. Stating that these claims are “exaggerated” is not fair to all the children and foster caregivers that have already experienced these traumatic situations, some of which involve deadly weapons like knives and guns.

Note: To read the full text of the HB 214 law, click [here](#).

Support from Representative Wagner, as well as Governor Ted Strickland, Speaker of the House Jon Husted, and then Majority Whip Bill Seitz, were essential to restoring the public records exclusion language.

TRAINING REQUIREMENT CHANGES

HB 214 will affect private agencies in Ohio that provide foster care services in the following ways:

1. Pre-placement training hours will increase from 24 to 36 for your family foster parents. Therefore, the amount of time that your prospective foster parents take to complete training will likely increase. Pre-placement training requirements for specialized foster parents will remain at 36 hours. *Note: this specific part of the rule goes into effect on January 1, 2009 so as to not interfere with prospective foster parents going through training now.*
2. A training hour is changed to mean 60 consecutive minutes of instruction with a break of no longer than 5 minutes per training hour.
3. Reimbursement for prospective foster caregivers who have gone through training will now be paid as a lump sum upon certification.
4. Foster parents are now able to complete up to 20% of their training requirements by teaching one or more training classes to other foster parents or by providing mentoring services to other foster parents. There are criteria for becoming a teacher or mentor, such as you must have had at least 2 years of experience as a foster parent, you must have had at least 2 children placed with you, you must have a currently licensed foster home, and you must not be under a corrective action plan or under investigation by ODJFS or your recommending agency for violation of rules or laws.