

§ 410.1001 Definitions.

For the purposes of this part, the following definitions apply.

ACF means the Administration for Children and Families, Department of Health and Human Services.

Attorney of record means an attorney who represents an unaccompanied child in legal proceedings or matters subject to the consent of the unaccompanied child. In order to be recognized as an unaccompanied child's attorney of record by the Office of Refugee Resettlement (ORR), for matters within ORR's authority, the individual must provide proof of representation of the child to ORR. ORR notes that attorneys of record may engage with ORR in the course of this representation in order to obtain custody-related document and to engage in other communications necessary to facilitate the representation.

Best interest is a standard ORR applies in determining the types of decisions and actions it makes in relation to the care of an unaccompanied child. When evaluating what is in a child's best interests, ORR considers, as appropriate, the following non-exhaustive list of factors: the unaccompanied child's expressed interests, in accordance with the unaccompanied child's age and maturity; the unaccompanied child's mental and physical health; the wishes of the unaccompanied child's parents or legal guardians; the intimacy of relationship(s) between the unaccompanied child and the child's family, including the interactions and interrelationship of the unaccompanied child with the child's parents, siblings, and any other person who may significantly affect the unaccompanied child's well-being; the unaccompanied child's adjustment to the community; the unaccompanied child's cultural background and primary language; length or lack of time the unaccompanied child has lived in a stable environment; individualized needs, including any needs related to the unaccompanied child's disability; and the unaccompanied child's development and identity.

Care provider facility means any physical site, including an individual family home, that houses one or more unaccompanied children in ORR custody and is operated by an ORR-funded program that provides residential services for unaccompanied children. Out of network (OON) placements are not included within this definition.

Case file means the physical and electronic records for each unaccompanied child that are pertinent to the care and placement of the child. Case file materials include but are not limited to biographical information on each unaccompanied child; copies of birth and marriage certificates; various ORR forms and supporting documents (and attachments, e.g., photographs); incident reports; medical and dental records; mental health evaluations; case notes and records, including educational records, clinical notes and records; immigration forms and notifications; legal papers; home studies and/or post-release service records on a sponsor of an unaccompanied child; family unification information including the sponsor's individual and financial data; case disposition; correspondence regarding the child's case; and Social Security number (SSN); juvenile/criminal history records; and other relevant records. The records of unaccompanied children are the property of ORR, whether in the possession of ORR or a grantee or contractor, and grantees and

contractors may not release these records without prior approval from ORR, except for program administration purposes.

Case manager means the individual that coordinates, in whole or in part, assessments of unaccompanied children, individual service plans, and efforts to release unaccompanied children from ORR custody. Case managers also ensure services for unaccompanied children are documented within the case files for each unaccompanied child.

Chemical restraints include, but are not limited to, drugs administered to children to chemically restrain them, and external chemicals such as pepper spray or other forms of inflammatory and/or aerosol agents.

Child advocates means third parties, appointed by ORR consistent with its authority under TVPRA at 8 U.S.C. 1232(c)(6), who make independent recommendations regarding the best interests of an unaccompanied child.

Clear and convincing evidence means a standard of evidence requiring that a factfinder be convinced that a contention is highly probable—*i.e.*, substantially more likely to be true than untrue.

Close relative means a brother, sister, grandparent, aunt, uncle, first cousin, or other immediate biological relative, or immediate relative through legal marriage or adoption, and half-sibling.

Corrective action means steps taken to correct any care provider facility noncompliance identified by ORR.

Department of Justice Accredited Representative, or *DOJ Accredited Representative*, means a representative of a qualified nonprofit religious, charitable, social service, or other similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292. A DOJ Accredited Representative who is representing a child in ORR custody may file a notice of such representation in order to receive updates on the unaccompanied child.

DHS means the U.S. Department of Homeland Security.

Director means the Deputy Assistant Secretary for Humanitarian Services and Director of the Office of Refugee Resettlement (ORR), Administration for Children and Families, Department of Health and Human Services.

Disability means, with respect to an individual, the definition provided by section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, which is adopted by reference in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), and its implementing regulations, 45 CFR 84.3 (programs receiving Department of Health and Human Services (HHS) financial assistance) and 45 CFR 85.3 (programs conducted by HHS), as well as in the TVPRA at 8 U.S.C. 1232(c)(3)(B).

Discharge means an unaccompanied child that exits ORR custody, or the act of an unaccompanied child exiting ORR custody.

Emergency means an act or event (including, but not limited to, a natural disaster, facility fire, civil disturbance, or medical or public health concerns at one or more facilities) that prevents timely transport or placement of unaccompanied children, or impacts other conditions provided by this part.

Emergency incidents means urgent situations in which there is an immediate and severe threat to a child's safety and well-being that requires immediate action, and also includes unauthorized absences of unaccompanied children from a care provider facility. Emergency incidents include, but are not limited to:

- (1) Abuse or neglect in ORR care where there is an immediate and severe threat to the child's safety and well-being, such as physical assault resulting in serious injury, sexual abuse, or suicide attempt;
- (2) Death of an unaccompanied child in ORR custody, including out-of-network facilities;
- (3) Medical emergencies;
- (4) Mental health emergencies requiring hospitalization; and
- (5) Unauthorized absences of unaccompanied children in ORR custody.

Emergency or influx facility (EIF) means a type of care provider facility that opens temporarily to provide shelter and services for unaccompanied children during an influx or emergency. An EIF is not defined as a standard program, shelter, or secure facility under this part. Because of the emergency nature of EIFs, they may be unlicensed or may be exempted from licensing requirements by State and/or local licensing agencies. EIFs may also be operated on federally-owned or leased property, in which case, the facility may not be subject to State or local licensing standards.

Emergency safety situation means a situation in which a child presents a risk of imminent physical harm to themselves, or others, as demonstrated by overt acts or expressed threats.

Family planning services include, but are not limited to, Food and Drug Administration (FDA)-approved contraceptive products (including emergency contraception), pregnancy testing and non-directive options counseling, sexually transmitted infection (STI) services, and referrals to appropriate specialists. ORR notes that the term "family planning services" does not include abortions. Instead, abortion is included in the definition of *medical services requiring heightened ORR involvement*, and is further discussed in § 410.1307.

Family Reunification Packet means an application and supporting documentation which must be completed by a potential sponsor who wishes to have an unaccompanied child released from ORR to their care. ORR uses the application and supporting documentation, as well as other

procedures, to determine the sponsor's ability to provide for the unaccompanied child's physical and mental well-being.

Heightened supervision facility means a facility that is operated by a program, agency or organization licensed by an appropriate State agency, or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children, and that meets the standards for standard programs set forth in § 410.1302, and that is designed for an unaccompanied child who requires close supervision but does not need placement in a secure facility, including a residential treatment center (RTC). It provides 24-hour supervision, custody, care, and treatment. It maintains stricter security measures than a shelter, such as intensive staff supervision, in order to provide supports, manage problem behavior, and prevent children from running away. A heightened supervision facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with juvenile detention centers or correctional facilities.

HHS means the U.S. Department of Health and Human Services.

Home study means an in-depth investigation of the potential sponsor's ability to ensure the child's safety and well-being, initiated by ORR as part of the sponsor suitability assessment. A home study includes an investigation of the living conditions in which the unaccompanied child would be placed if released to a particular potential sponsor, the standard of care that the unaccompanied child would receive, and interviews with the potential sponsor and other household members. A home study is conducted for any case where it is required by the TVPRA, this part, and for other cases at ORR's discretion, including for those in which the safety and well-being of the unaccompanied child is in question.

Influx means, for purposes of HHS operations, a situation in which the net bed capacity of ORR's standard programs that is occupied or held for placement by unaccompanied children meets or exceeds 85 percent for a period of seven consecutive days.

Legal guardian means an individual who has been lawfully vested with the power, and charged with the duty of caring for, including managing the property, rights, and affairs of, a child or incapacitated adult by a court of competent jurisdiction, whether foreign or domestic.

Legal service provider means an organization or individual attorney who provides legal services to unaccompanied children, either on a pro bono basis or through ORR funding for unaccompanied children's legal services. Legal service providers provide Know Your Rights presentations and screenings for legal relief to unaccompanied children, and/or direct legal representation to unaccompanied children.

LGBTQI+ includes lesbian, gay, bisexual, transgender, queer or questioning, and intersex.

Mechanical restraint means any device attached or adjacent to the child's body that the child cannot easily remove that restricts freedom of movement or normal access to the child's body. For purposes of the Unaccompanied Children Bureau, mechanical restraints are prohibited across all

care provider types except in secure facilities, where they are permitted only as consistent with State licensure requirements.

Medical services requiring heightened ORR involvement means:

- (1) Significant surgical or medical procedures;
- (2) Abortions; and
- (3) Medical services necessary to address threats to the life of or serious jeopardy to the health of an unaccompanied child.

Notification of Concern (NOC) means an instrument used by home study and post-release services providers, ORR care providers, and the ORR National Call Center staff to document and notify ORR of certain concerns that arise after a child is released from ORR care and custody.

Notice of Placement (NOP) means a written notice provided to unaccompanied children placed in restrictive placements, explaining the reasons for placement in the restrictive placement and kept as part of the child's case file. The care provider facility where the unaccompanied child is placed must provide the NOP to the child within 48 hours after an unaccompanied child's arrival at a restrictive placement, as well as at minimum every 30 days the child remains in a restrictive placement.

ORR means the Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

ORR long-term home care means an ORR-funded family or group home placement in a community-based setting. An unaccompanied child may be placed in long-term home care if ORR is unable to identify an appropriate sponsor with whom to place the unaccompanied child during the pendency of their immigration legal proceedings. "Long-term home care" has the same meaning as "long-term foster care," as that term is used in the definition of *traditional foster care* provided at 45 CFR 411.5.

ORR transitional home care means an ORR-funded short-term placement in a family or group home. "Transitional home care" has the same meaning as "transitional foster care," as that term is used in the definition of *traditional foster care* provided at 45 CFR 411.5.

Out of network (OON) placement means a facility that is licensed by an appropriate State agency and that provides physical care and services for individual unaccompanied children as requested by ORR on a case-by-case basis, that operates under a single case agreement for care of a specific child between ORR and the OON provider. OON may include hospitals, restrictive settings, or other settings outside of the ORR network of care. An OON placement is not defined as a standard program under this part.

Peer restraints mean asking or permitting other children to physically restrain another child.

Personal restraint means the application of physical force without the use of any device, for the purpose of restraining the free movement of a child's body. This does not include briefly holding a child without undue force in order to calm or comfort them.

Placement means delivering the unaccompanied child to the physical custody and care of either a care provider facility or an alternative to such a facility. An unaccompanied child who is placed pursuant to this part is in the legal custody of ORR and may only be transferred or released by ORR. An unaccompanied child remains in the custody of a referring agency until the child is physically transferred to a care provider facility or an alternative to such a facility.

Placement Review Panel means a three-member panel consisting of ORR's senior-level career staff with requisite experience in child welfare that is convened for the purposes of reviewing requests for reconsideration of restrictive placements. An ORR staff member who was involved with the decision to step-up an unaccompanied child to a restrictive placement may not serve as a Placement Review Panel member with respect to that unaccompanied child's placement.

Post-release services (PRS) mean follow-up services as that term is used in the TVPRA at 8 U.S.C. 1232(c)(3)(B). PRS are ORR-approved services which may, and when required by statute must, be provided to an unaccompanied child and the child's sponsor, subject to available resources as determined by ORR, after the child's release from ORR custody. Assistance may include linking families to educational and community resources, home visits, case management, in-home counseling, and other social welfare services, as needed. When follow-up services are required by statute, the nature and extent of those services would be subject to available resources.

Program-level events mean situations that affect the entire care provider facility and/or unaccompanied children and its staff within and require immediate action and include, but are not limited to:

- (1) Death of a staff member, other adult, or a child who is not an unaccompanied child but is in the care provider facility's care under non-ORR funding;
- (2) Major disturbances such as a shooting, attack, riot, protest, or similar occurrence;
- (3) Natural disasters such as an earthquake, flood, tornado, wildfire, hurricane, or similar occurrence;
- (4) Any event that affects normal operations for the care provider facility such as, for instance, a long-term power outage, gas leaks, inoperable fire alarm system, infectious disease outbreak, or similar occurrence.

Prone physical restraint means a restraint restricting a child's breathing, restricting a child's joints or hyperextending a child's joints, or requiring a child to take an uncomfortable position.

PRS provider means an organization funded by ORR to connect the sponsor and unaccompanied child to community resources for the child and for other child welfare services, as needed, following the release of the unaccompanied child from ORR custody.

Psychotropic medication(s) means medication(s) that are prescribed for the treatment of symptoms of psychosis or another mental, emotional, or behavioral disorder and that are used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state. The term includes the following categories:

- (1) Psychomotor stimulants;
- (2) Antidepressants;
- (3) Antipsychotics or neuroleptics;
- (4) Agents for control of mania or depression;
- (5) Antianxiety agents; and
- (6) Sedatives, hypnotics, or other sleep-promoting medications.

Qualified interpreter means:

- (1) For an individual with a disability, an interpreter who, via a video remote interpreting service (VRI) or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.
- (2) For a limited English proficient individual, an interpreter who via a remote interpreting service or an on-site appearance:
 - (i) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language;
 - (ii) Is able to interpret effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and
- (3) Adheres to generally accepted interpreter ethics principles, including client confidentiality.

Qualified translator means a translator who:

- (1) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;
- (2) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and
- (3) Adheres to generally accepted translator ethics principles, including client confidentiality.

Release means discharge of an unaccompanied child to an ORR-vetted and approved sponsor. After release, ORR does not have legal custody of the unaccompanied child, and the sponsor becomes responsible for providing for the unaccompanied child's physical and mental well-being.

Residential treatment center (RTC) means a sub-acute, time limited, interdisciplinary, psycho-educational, and therapeutic 24-hour-a-day structured program with community linkages, provided through non-coercive, coordinated, individualized care, specialized services, and interventions. RTCs provide highly customized care and services to individuals following either a community-based placement or more intensive intervention, with the aim of moving individuals toward a stable, less intensive level of care or independence. RTCs are a type of secure facility and are not a standard program under this part.

Restrictive placement means a secure facility, including RTCs, or a heightened supervision facility.

Runaway risk means it is highly probable or reasonably certain that an unaccompanied child will attempt to abscond from ORR care. Such determinations must be made in view of a totality of the circumstances and should not be based solely on a past attempt to run away.

Seclusion means the involuntary confinement of a child alone in a room or area from which the child is instructed not to leave or is physically prevented from leaving.

Secure facility means a facility with an ORR contract or cooperative agreement having separate accommodations for minors, in a physically secure structure with staff able to control violent behavior. ORR uses a secure facility as the most restrictive placement option for an unaccompanied child who poses a danger to self or others or has been charged with having committed a criminal offense. A secure facility is not defined as a standard program or shelter under this part.

Shelter means a kind of standard program in which all of the programmatic components are administered on-site, consistent with the standards set forth in § 410.1302.

Significant incidents mean non-emergency situations that may immediately affect the safety and well-being of a child. Significant incidents include, but are not limited to:

- (1) Abuse or neglect in ORR care;
- (2) Sexual harassment or inappropriate sexual behavior;
- (3) Staff Code of Conduct violations; (4) Contact or threats to an unaccompanied child while in ORR care from trafficking or smuggling syndicates, organized crime, or other criminal actors;
- (5) Incidents involving law enforcement on site;
- (6) Potential fraud schemes perpetrated by outside actors on unaccompanied children's sponsors;
- (7) Separation from a parent or legal guardian upon apprehension by a Federal agency;

(8) Mental health concerns; and

(9) Use of safety measures, such as restraints.

Sponsor means an individual (or entity) to whom ORR releases an unaccompanied child out of ORR custody, in accordance with ORR's sponsor suitability assessment process and release procedures.

Staff Code of Conduct means the set of personnel requirements established by ORR in order to promote a safe environment for unaccompanied children in its care, including protecting unaccompanied children from sexual abuse and sexual harassment.

Standard program means any program, agency, or organization that is licensed by an appropriate State agency to provide residential, group, or transitional or long-term home care services for dependent children, including a program operating family or group homes, or facilities for unaccompanied children with specific individualized needs; or that meets the requirements of State licensing that would otherwise be applicable if it is in a State that does not allow state licensing of programs providing care and services to unaccompanied children. A standard program must meet the standards set forth in § 410.1302. All homes and facilities operated by a standard program, including facilities for unaccompanied children with specific individualized needs, shall be non-secure as required under State law. However, a facility for unaccompanied children with specific individualized needs may maintain that level of security permitted under State law which is necessary for the protection of an unaccompanied child or others in appropriate circumstances.

Tender age means twelve years of age or younger.

Transfer means the movement of an unaccompanied child from one ORR care provider facility to another ORR care provider facility, such that the receiving care provider facility takes over physical custody of the child. ORR sometimes uses the terms “step-up” and “step-down” to describe transfers of unaccompanied children to or from restrictive placements. For example, if ORR transfers an unaccompanied child from a shelter facility to a heightened supervision facility, that transfer would be a “step-up,” and a transfer from a heightened supervision facility to a shelter facility would be a “step-down.” But a transfer from a shelter to a community-based care facility, or vice versa, would be neither a step-up nor a step-down, because both placement types are not considered restrictive.

Trauma bond means when a trafficker uses rewards and punishments within cycles of abuse to foster a powerful emotional connection with the victim.

Trauma-informed means a system, standard, process, or practice that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in unaccompanied children, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.

Unaccompanied child/children means a child who:

(1) Has no lawful immigration status in the United States;

(2) Has not attained 18 years of age; and

(3) With respect to whom:

(i) There is no parent or legal guardian in the United States; or

(ii) No parent or legal guardian in the United States is available to provide care and physical custody.

Unaccompanied Refugee Minors (URM) Program means the child welfare services program available pursuant to 8 U.S.C. 1522(d).

[89 FR 34584, Apr. 30, 2024; 89 FR 53361, June 26, 2024]