

§ 410.1105 Criteria for placing an unaccompanied child in a restrictive placement.

(a) *Criteria for placing an unaccompanied child in a secure facility that is not a residential treatment center (RTC).* (1) ORR may place an unaccompanied child in a secure facility (that is not an RTC) either at initial placement or through a transfer to another care provider facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child's case file. All determinations to place an unaccompanied child in a secure facility (that is not an RTC) will be reviewed and approved by ORR Federal field staff. A finding that a child poses a danger to self shall not be the sole basis for a child's placement in a secure facility (that is not an RTC).

(2) ORR shall not place an unaccompanied child in a secure facility (that is not an RTC) if less restrictive alternatives in the best interests of the unaccompanied child are available and appropriate under the circumstances. ORR shall place an unaccompanied child in a heightened supervision facility or other non-secure care provider facility as an alternative, provided that the unaccompanied child does not currently pose a danger to others and does not need placement in an RTC pursuant to the standard set forth at 410.1105(c).

(3) ORR may place an unaccompanied child in a secure facility (that is not an RTC) only if the unaccompanied child:

(i) Has been charged with or has been convicted of a crime, or is the subject of delinquency proceedings, delinquency charge, or has been adjudicated delinquent, and where ORR deems that those circumstances demonstrate that the unaccompanied child poses a danger to others, not including:

(A) An isolated offense that was not within a pattern or practice of criminal activity and did not involve violence against a person or the use or carrying of a weapon; or

(B) A petty offense, which is not considered grounds for stricter means of detention in any case;

(ii) While in DHS or ORR's custody, or while in the presence of an immigration officer or ORR official or ORR contracted staff, has committed, or has made credible threats to commit, a violent or malicious act directed at others; or

(iii) Has engaged, while in a restrictive placement, in conduct that has proven to be unacceptably disruptive of the normal functioning of the care provider facility, and removal is necessary to ensure the welfare of others, as determined by the staff of the care provider facility (e.g., stealing, fighting, intimidation of others, or sexually predatory behavior), and ORR determines the unaccompanied child poses a danger to others based on such conduct.

(b) *Criteria for placing an unaccompanied child in a heightened supervision facility.* (1) ORR may place an unaccompanied child in a heightened supervision facility either at initial placement or through a transfer to another facility from the initial placement. This determination must be made based on clear and convincing evidence documented in the unaccompanied child's case file.

(2) In determining whether to place an unaccompanied child in a heightened supervision facility, ORR considers if the unaccompanied child:

(i) Has been unacceptably disruptive to the normal functioning of a shelter such that transfer is necessary to ensure the welfare of the unaccompanied child or others;

(ii) Is a runaway risk;

(iii) Has displayed a pattern of severity of behavior, either prior to entering ORR custody or while in ORR care, that requires an increase in supervision by trained staff;

(iv) Has a non-violent criminal or delinquent history not warranting placement in a secure facility, such as isolated or petty offenses as described in paragraph (a)(3)(i) of this section;

(v) Is assessed as ready for step-down from a secure facility, including an RTC.

(c) *Criteria for placing an unaccompanied child in an RTC.* (1) An unaccompanied child with serious mental health or behavioral health issues may be placed in an RTC only if the unaccompanied child is evaluated and determined to be a danger to self or others by a licensed psychologist or psychiatrist consulted by ORR or a care provider facility, which includes a determination by clear and convincing evidence documented in the unaccompanied child's case file, including documentation by a licensed psychologist or psychiatrist that placement in an RTC is appropriate.

(2) ORR may place an unaccompanied child in an out of network (OON) RTC when a licensed clinical psychologist or psychiatrist consulted by ORR or a care provider facility has determined that the unaccompanied child requires a level of care only found in an OON RTC either because the unaccompanied child has identified needs that cannot be met within the ORR network of RTCs or no placements are available within ORR's network of RTCs, or that an OON RTC would best meet the unaccompanied child's identified needs.

(3) The criteria for placement in or transfer to an RTC also apply to transfers to or placements in OON RTCs. Care provider facilities may request ORR to transfer an unaccompanied child to an RTC in accordance with § 410.1601(d).

(d) For an unaccompanied child with one or more disabilities, consistent with section 504 of the Rehabilitation Act, 29 U.S.C. 794(a), ORR's determination under § 410.1105 whether to place the unaccompanied child in a restrictive placement shall include consideration whether there are any reasonable modifications to the policies, practices, or procedures of an available less restrictive placement or any provision of auxiliary aids and services that would allow the unaccompanied child to be placed in that less restrictive facility. ORR's consideration of reasonable modifications and auxiliary aids and services to facilitate less restrictive placement shall also apply to transfer decisions under § 410.1601 and will be incorporated into restrictive placement case reviews under § 410.1901. However, ORR is not required to take any action that it can demonstrate would fundamentally alter the nature of a program or activity.