

§ 410.1309 Legal services.

(a) *Unaccompanied children's access to immigration legal services*—(1) *Purpose.* This paragraph (a) describes ORR's responsibilities in relation to legal services for unaccompanied children, consistent with 8 U.S.C. 1232(c)(5).

(2) *Orientation.* An unaccompanied child in ORR's legal custody shall receive:

(i) An in-person, telephonic, or video presentation concerning the rights and responsibilities of undocumented children in the immigration system, presented in the native or preferred language of the unaccompanied child and in an age-appropriate manner.

(A) Such presentation shall be provided by an independent legal service provider that has appropriate qualifications and experience, as determined by ORR, to provide such presentation and shall include information notifying the unaccompanied child of their legal rights and responsibilities, including protections under child labor laws, and of services to which they are entitled, including educational services. The presentation must be delivered in the native or preferred language of the unaccompanied child and in an age-appropriate manner.

(B) Such presentation shall occur within 10 business days of child's admission to ORR, within 10 business days of a child's transfer to a new ORR facility (except ORR long-term home care or ORR transitional home care), and every 6 months for unrepresented children who remain in ORR custody, as practicable. If the unaccompanied child is released before 10 business days, a legal service provider shall follow up as soon as practicable to complete the presentation, in person or remotely.

(ii) Information regarding the availability of free legal assistance and that they may be represented by counsel at no expense to the Government. When an unaccompanied child requests legal counsel, ORR shall ensure that the child is provided with a list and contact information for pro bono counsel, and reasonable assistance to ensure that the child is able to successfully engage an attorney at no cost to the Government.

(iii) Notification regarding the child's ability to petition for Special Immigrant Juvenile (SIJ) classification, to request that a juvenile court determine dependency or placement in accordance with § 410.1209, and notification of the ability to apply for asylum or other forms of relief from removal.

(iv) Information regarding the unaccompanied child's right to a removal hearing before an immigration judge, the ability to apply for asylum with United States Citizenship and Immigration Services (USCIS) in the first instance, and the ability to request voluntary departure in lieu of removal.

(v) A confidential legal consultation with a qualified attorney (or paralegal working under the direction of an attorney, or DOJ Accredited Representative) to determine possible forms of relief from removal in relation to the unaccompanied child's immigration case, as well as other case disposition options such as, but not limited to, voluntary departure. Such consultation shall occur within 10 business days of a child's transfer to a new ORR facility (except ORR long-term home

care or ORR transitional home care) or upon request from ORR. ORR shall request an additional legal consultation on behalf of a child, if the child has been identified as:

(A) A potential victim of a severe form of trafficking;

(B) Having been abused, abandoned, or neglected; or

(C) Having been the victim of a crime or domestic violence; or

(D) Persecuted or in fear of persecution due to race, religion, nationality, membership in a particular social group, or for a political opinion.

(vi) An unaccompanied child in ORR care shall be able to conduct private communications with their attorney of record, DOJ Accredited Representative, or legal service provider in a private enclosed area that allows for confidentiality for in-person, virtual, or telephonic meetings.

(vii) Information regarding the child's right to a hearing before an independent HHS hearing officer, to determine, through a written decision, whether the unaccompanied child would present a risk of danger to self or to the community if released, as described at § 410.1903(a) and (b).

(3) *Accessibility of information.* In addition to the requirements in paragraphs (a)(1) and (2) of this section for orienting and informing unaccompanied children of their legal rights and access to services while in ORR care, ORR shall also require this information be posted for unaccompanied children in an age-appropriate format and translated into each child's preferred language, in any ORR contracted or grant-funded facility where unaccompanied children are in ORR care.

(4) *Direct immigration legal representation services for unaccompanied children currently or previously under ORR care.* To the extent ORR determines that appropriations are available, and insofar as it is not practicable for ORR to secure pro bono counsel, ORR shall fund legal service providers to provide direct immigration legal representation for certain unaccompanied children, subject to ORR's discretion and available appropriations. Examples of direct immigration legal representation include, but are not limited to:

(i) For unrepresented unaccompanied children who become enrolled in ORR Unaccompanied Refugee Minor (URM) programs, provided they have not yet obtained immigration relief or reached 18 years of age at the time of retention of an attorney;

(ii) For unaccompanied children in ORR care who are in proceedings before EOIR, including unaccompanied children seeking voluntary departure, and for whom other available assistance does not satisfy the legal needs of the individual child;

(iii) For unaccompanied children released to a sponsor residing in the defined service area of the same legal service provider who provided the child legal services in ORR care, to promote continuity of legal services; and

(iv) For other unaccompanied children, to the extent ORR determines that appropriations are available.

(b) *Legal services for the protection of unaccompanied children's interests in certain matters not involving direct immigration representation*—(1) *Purpose.* This paragraph (b) provides for the use of additional funding for legal services, to the extent that ORR determines it to be available, to help ensure that the interests of unaccompanied children are considered in certain matters relating to their care and custody, to the greatest extent practicable.

(2) *Funding.* To the extent ORR determines that appropriations are available, and insofar as it is not practicable for ORR to secure pro bono counsel, ORR may fund access to counsel for unaccompanied children, including for purposes of legal representation, in the following enumerated non-immigration related matters, subject to ORR's discretion and in no particular order of priority:

(i) ORR appellate procedures, including Placement Review Panel (PRP), under § 410.1902, and risk determination hearings, under § 410.1903;

(ii) For unaccompanied children upon their placement in ORR long-term home care or in a residential treatment center outside a licensed ORR facility, and for whom other legal assistance does not satisfy the legal needs of the individual child;

(iii) For unaccompanied children with no identified sponsor who are unable to be placed in ORR long-term home care or ORR transitional home care;

(iv) For purposes of judicial bypass or similar legal processes as necessary to enable an unaccompanied child to access certain lawful medical procedures that require the consent of the parent or legal guardian under State law, and when the unaccompanied child is unable or unwilling to obtain such consent;

(v) For the purpose of representing an unaccompanied child in state juvenile court proceedings, when the unaccompanied child already possesses SIJ classification; and

(vi) For the purpose of helping an unaccompanied child to obtain an employment authorization document.

(c) *Standards for legal services for unaccompanied children.* (1) In-person meetings are preferred during the course of providing legal counsel to any unaccompanied child under paragraph (a) or (b) of this section, though telephonic or teleconference meetings between the unaccompanied child's attorney or DOJ Accredited Representative and the unaccompanied child may substitute as appropriate. Either the unaccompanied child's attorney, DOJ Accredited Representative, or a care provider staff member or care provider shall always accompany the unaccompanied child to any in-person courtroom hearing or proceeding, in connection with any legal representation of an unaccompanied child pursuant to this section.

(2) Upon receipt by ORR of proof of representation and authorization for release of records signed by the unaccompanied child or other authorized representative, ORR shall share, upon request and within a reasonable timeframe to be established by ORR, the unaccompanied child's complete case file, apart from any legally required redactions, to assist in the legal representation

of the unaccompanied child. In addition to sharing the complete case file, upon request by an attorney of record or DOJ Accredited Representative, ORR shall promptly provide the attorney of record or DOJ Accredited Representative with the name and telephone number of potential sponsors who have submitted a completed family reunification application to ORR for their client, if the potential sponsors have provided consent to release of their information. Furthermore, and absent a reasonable belief based upon articulable facts that doing so would endanger an unaccompanied child, ORR shall ensure that unaccompanied children are allowed to review, upon request and in the company of their attorney of record or DOJ Accredited Representative if any, such papers, notes, and other writings they possessed at the time they were apprehended by DHS or another Federal department or agency, that are in ORR or an ORR care provider facility's possession.

(3) If an unaccompanied child's attorney of record or DOJ Accredited Representative properly requests their client's case file on an expedited basis, ORR shall, within seven calendar days, unless otherwise provided herein, provide the attorney of record or DOJ Accredited Representative with key documents from the unaccompanied child's case file, as determined by ORR.

(4) Expedited basis refers to any of the following situations:

(i) Unaccompanied child has been reported missing to the National Center for Missing and Exploited Children;

(ii) Unaccompanied child has a court hearing scheduled within 30 calendar days;

(iii) Unaccompanied child is turning 18 years old in less than 30 calendar days;

(iv) Unaccompanied child has a risk determination hearing pursuant to § 410.1903 of this part scheduled within 30 calendar days;

(v) Records are needed for the provision of medical services to the child;

(vi) Records are needed for the child's enrollment or continued enrollment in school;

(vii) Records are needed for a Federal, State, or local agency investigation related to the subject of the request; or

(viii) Any other situation in which ORR determines, in its discretion, that an expedited response is warranted.

(d) *Grants or contracts for unaccompanied children's immigration legal services.* (1) This paragraph (d) prescribes requirements concerning grants or contracts to legal service providers to ensure that all unaccompanied children who are or have been in ORR care have access to counsel to represent them in immigration legal proceedings or matters and to protect them from mistreatment, exploitation and trafficking, to the greatest extent practicable, in accordance with the TVPRA [at 8 U.S.C. 1232(c)(5)] and 292 of the Immigration and Nationality Act [at 8 U.S.C. 1362].

(2) ORR may make grants, in its discretion and subject to available resources—including formula grants distributed geographically in proportion to the population of released unaccompanied children—or contracts under this section to qualified agencies or organizations, as determined by ORR and in accordance with the eligibility requirements outlined in the authorizing statute, for the purpose of providing immigration legal representation, assistance and related services to unaccompanied children who are in ORR care, or who have been released from ORR care and living in a State or region.

(3) Subject to the availability of funds, grants or contracts shall be calculated based on the historic proportion of the unaccompanied child population in the State within a lookback period determined by the Director, provided annually by the State.

(e) *Non-retaliation against legal service providers.* ORR shall presume that legal service providers and other legal representatives are acting in good faith with respect to their advocacy on behalf of unaccompanied children and ORR shall not retaliate against a legal service provider or other legal representative for actions taken within the scope of the legal service provider's or representative's responsibilities. For example, ORR shall not engage in retaliatory actions against legal service providers or any other representative for reporting harm or misconduct on behalf of an unaccompanied child or appearance in an action adverse to ORR.

(f) *Resource email box.* ORR shall create and maintain a resource email box for feedback from legal services providers regarding emerging issues related to immediate performance of legal services at care provider facilities. ORR shall address such emerging issues as needed.