

§ 410.1901 Restrictive placement case reviews.

(a) In all cases involving a restrictive placement, ORR shall have the burden to determine, based on clear and convincing evidence, that sufficient grounds exist for stepping up or continuing to hold an unaccompanied child in a restrictive placement. The evidence supporting a restrictive placement decision shall be recorded in the unaccompanied child's case file.

(b) ORR shall provide an unaccompanied child with a Notice of Placement (NOP) in the child's native or preferred language no later than 48 hours after step-up to a restrictive placement, as well as every 30 days the unaccompanied child remains in a restrictive placement.

(1) The NOP shall clearly and thoroughly set forth the reason(s) for placement and a summary of supporting evidence.

(2) The NOP shall inform the unaccompanied child of their right to contest the restrictive placement before a Placement Review Panel (PRP) upon receipt of the NOP and the procedures by which the unaccompanied child may do so. The NOP shall further inform the unaccompanied child of all other available administrative review processes.

(3) The NOP shall include an explanation of the unaccompanied child's right to be represented by counsel at no cost to the Federal Government in challenging such restrictive placement.

(4) A case manager shall explain the NOP to the unaccompanied child, in a language the unaccompanied child understands.

(c) The care provider facility shall provide a copy of the NOP to the unaccompanied child's attorney of record, legal service provider, child advocate, and to a parent or legal guardian of record, no later than 48 hours after step-up as well as every 30 days the unaccompanied child remains in a restrictive placement.

(1) Service of the NOP on a parent or legal guardian shall not be required where there are child welfare reasons not to do so, where the parent or legal guardian cannot be reached, or where an unaccompanied child 14 or over states that the unaccompanied child does not wish for the parent or legal guardian to receive the NOP.

(2) Child welfare rationales include but are not limited to: a finding that the automatic provision of the notice could endanger the unaccompanied child; potential abuse or neglect by the parent or legal guardian; a parent or legal guardian who resides in the United States but refuses to act as the unaccompanied child's sponsor; or a scenario where the parent or legal guardian is non-custodial and the unaccompanied child's prior caregiver (such as a caregiver in home country) requests that the non-custodial parent not be notified of the placement.

(3) When an NOP is not automatically provided to a parent or legal guardian, ORR shall document, within the unaccompanied child's case file, the child welfare reason for not providing the NOP to the parent or legal guardian.

(d) ORR shall further ensure the following automatic administrative reviews:

- (1) At minimum, a 30-day administrative review for all restrictive placements;
- (2) A more intensive 90-day review by ORR supervisory staff for unaccompanied children in secure facilities; and
- (3) For unaccompanied children in residential treatment centers, the 30-day review at paragraph (d)(1) of this section must involve a psychiatrist or psychologist to determine whether the unaccompanied child should remain in restrictive residential care.