

Memo: City Employees as Foster Parents

City of Philadelphia

Law Department

To: Alba E. Martinez, Commissioner, Department of Human Services

From: Nelson A. Diaz, City Solicitor

Subject: City Employees as Foster Parents

You have asked for an opinion to determine if City employees may serve as foster care parents for children placed by The City of Philadelphia Department of Human Services (“DHS”). It is my opinion that City employees may serve as foster parents for children, in the same capacity as other citizens who apply through Foster Family Care Agencies (“FFCAs”).

Section 10-102 of the Philadelphia Home Rule Charter (“Charter”) precludes city officers and employees from improperly benefiting from their employment status with the City. As stated in the various sections and annotations in Article X, the purpose and intent of the prohibitions is to preclude unethical conduct intended to benefit the employee, or actions where employees solicit or look for personal profit or gain related to City contracts. See generally Section 10-100, Annotation, Purposes 1–3. The purpose of these prohibitions, including Section 10-102, is to prevent an employee from using his City employment status and/or authority for personal gain, reward, or advantage. This is not the case in foster care placements.

In 1920, the City of Philadelphia created a bureau within the Department of Public Welfare to care for dependent children who were wards of the city. The city ordinances, state statutes, and federal laws have expanded and defined the functions of what is now DHS. DHS is the City agency charged with the public mandate of providing child welfare services to families.

On November 19, 1997, the Adoption and Safe Families Act (“ASFA”), 42 U.S.C.S. §1305 et seq., was signed into law, amending Title IV-B and IV-E of the Social Security Act. ASFA established that the safety of children is the “paramount concern that must guide all child welfare services”. The law also gave renewed impetus to dismantle the barriers that existed between children waiting in foster care and establishing a permanent home.

The General Assembly of the Commonwealth of Pennsylvania passed amendments in 1998 to bring state law into compliance with ASFA. Furthermore, the purpose of the Juvenile Act, 42 Pa.C.S.A. § 6301 et seq., was redefined “to preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.”

Today there are roughly 7,800 children in out-of-home care out of approximately 23,000 children receiving services from DHS. For children entering placement, the initial goal is to provide placement in a safe setting that is the least restrictive and the most appropriate

for the child. DHS seeks placement of a child outside the home only as a service of last resort. DHS Children and Youth Division Policy Manual, Section 5200.

Foster care is a "child welfare service which provides substitute family care for a planned period for a child when his own family cannot care for him for a temporary or extended period, and when adoption is neither desirable or possible . . ." Chester County Children and Youth Services v. Cunningham, 540 Pa. 258, 265, 656 A.2d 1346, 1350 (1995) (quoting Smith v. OFFER, 431 U.S. 816 (1977)). In addition, the foster care relationship may also lead to permanent adoption by the caregivers, which increases the pool of possible adoptive parents.

Foster care is defined and governed by state and federal statutes together with their regulations. The foster care system in Philadelphia involves multiple parties, including the Commonwealth Department of Public Welfare, DHS as the county children and youth social services agency, and independent FFCAs, which are non-governmental entities. These FFCAs locate, evaluate and monitor foster families that provide direct care for the foster children receiving care. See 55 Pa. Code § 3700.1 et seq.

DHS policy, in keeping with state and federal regulations, require that all placement decisions be guided by the child's best interests, including the child's physical and psychological well being. Thus, an important public policy exists to support and encourage the provision of foster care services to the City's children. This policy has been codified under both state and federal law. See 55 Pa. Code § 3130.1 et seq.; 55 Pa. Code § 3140.1 et seq.; 55 Pa. Code § 3680.1 et seq.; 55 Pa. Code § 3700.1 et seq.; 42 U.S.C.A. § 675 et seq.; 42 C.F.R. §1355.50 et seq.; 42 C.F.R. §1356.21 et seq.

With very few exceptions, DHS operates foster care programs through contractual relationships with FFCAs. Both FFCAs and individuals providing such care are regulated by state law. The Act states:

The goal of this chapter is to reduce risk to children in placement; to protect their health, safety and human rights; to establish minimum requirements for the operation of a foster family agency; and to establish minimum requirements to be applied by foster family care agencies when approving and supervising foster families.

55 Pa. Code §3700.2

The regulations encompass an extensive scope of issues, from the number of children allowed in a foster family home (§ 3700.31), to child discipline policies (§ 3700.36), to foster family residence requirements (§ 3700.66).

Foster care parents are eligible to receive reimbursement to cover the costs of the care, a "nonentitlement benefit." 55 Pa. Code § 3140.1. Reimbursement is provided by DHS from a combination of federal, state and local funds. The breakdown of funds is approximately 50% federal, 40% state, and 10% City. Foster care funding is also governed by Title IV-E of the Social Security Act, 42 U.S.C.A § 670 et seq., and state

statutes and regulations. See 62 P.S. § 701 et seq.; 55 Pa. Code § 3140.1(3) et seq., § 3170 et seq., and § 3680 et seq. The federal and state statutes provide the broad parameters for foster care funding, and more importantly, the Pennsylvania Code provides a comprehensive set of regulations governing the disbursement of funds. Foster parents are eligible to receive reimbursement that covers the “allowable costs” of providing the foster child with food, clothing, shelter, child care, personal incidentals, reasonable travel costs for the child to visit his or her family, and school supplies. See 55 Pa. Code § 3140.131; 42 U.S.C.A. § 675(4)(A).

This reimbursement is provided on behalf of the child for his or her benefit, not for the benefit of the foster parent. 45 C.F.R. 1355.20(a). The payments are meant to cover the costs associated with foster care, not as payment to the parent for the foster care service. 42 U.S.C.A. § 675 (4)(A).

Where a City employee, as an individual, enters into a personal services contract with the City a clear violation of Section 10-102 occurs. See, e.g., Opinion No. 95-16 and Opinion No. 95-17, 1994-1996 City Solicitor’s Opinions at 130-137. This general proposition remains unchanged by the instant opinion. However, such a violation does not occur where a City employee serves as a foster care parent.

Most importantly, there is no privity of contract between DHS and the City employees that provide the direct foster care to the children. Instead, there is a system codified by statutes and regulations, with funds from the state and federal governments allocated to DHS for utilization and disbursement. DHS contracts with appropriate FFCAs that locate, evaluate, and monitor foster families that provide direct care. The FFCA enters into agreements with the foster family, and regulates the tripartite relationship between the agency, the foster family, and the child, consistent with the myriad of governmental regulations and protections.

Second, the foster care placement reimbursement payment is designated for specific costs associated with the care of the child, rather than as a payment to the family for providing the foster care service. The reimbursement, which is best characterized as a partial reimbursement of child related expenses, inures to the child not the foster parent.

Thus, the precise question under consideration is whether a City employee caring for a foster child placed by DHS through a Foster Family Care Agency has an interest in a contract for services with the City, the answer is -- no. The unique and special nature of the relationship among the parties involved in the provision of foster care to children, while complicated, extensively regulated, and involving financial interests and monies, simply does not constitute an interest in a City service contract under Section 10-102 of the Charter.

The City Solicitor’s opinion of January 4, 1999, regarding City employees’ receipt of adoption assistance grants administered by DHS is similar to the question raised of foster care reimbursement. (See copy attached). The opinion concluded that an Adoption Assistance Agreement is not a contract for the supplying of services to the City, since the

parents do not agree to provide any particular service to the City or to the adopted child in return for receiving adoption assistance. The Solicitor's opinion held that adoption assistance is a grant, rather than a purchase of services, and thus Section 10-102 of the Charter was not implicated. Here, the foster care reimbursement, while not a grant, is in the nature of a grant for reimbursement of costs incurred by the foster parent for the care and maintenance of their foster child.

This opinion also stated that "Both the state and City ethics laws prohibit City employees from having a financial interest in their official actions [citations omitted]." The opinion also properly suggests how to avoid ethical concerns related to financial interests: "Therefore, City employees who are in a position to take or recommend action concerning adoption assistance [or in this instance foster care maintenance benefits] should not apply for such assistance unless they disclose their interest in the matter and disqualify themselves from any official action in the manner required by §20-608 of the Code." However, that is not what is involved in the process of foster care programs at DHS.

In my opinion, the harm or danger which Section 10-102 is intended to prevent does not arise where a City employee receives a foster care maintenance benefit on behalf of the child in his or her care. The benefit is not provided as a result of the foster parent's status as a City employee or the exercise of any power or authority of his employment. Moreover, this view supports the important public policy to encourage foster care for Philadelphia's children, without any denigration to the prohibitions of the Charter, or placing City employees on a different footing than other citizens of Philadelphia.

If you would like, my office will be happy to work with you and appropriate DHS staff to help develop policy and procedures to facilitate the inclusion of City employees in the pool of potential foster parents.

Attachment:

cc: Honorable John F. Street, Mayor  
Estelle B. Richman, Managing Director  
Joyce Wilkerson, Chief of Staff

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