

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3636

February 29, 1988

Joyce L. Cheeks, Esquire  
Staff Counsel  
South Carolina Foster Care  
Review Board System  
2221 Devine Street  
Suite 418  
Columbia, South Carolina 29205

Dear Ms. Cheeks:

You have requested the opinion of this Office on the Foster Care Review Board's responsibility to review cases of emotionally disturbed children who are privately placed. These children are placed by parents in therapeutic foster homes as a method of treatment through the Continuum of Care.

Enabling legislation established the Continuum of Care on May 23, 1986. The responsibility of the Continuum of Care for emotionally disturbed children is to ensure continuing delivery of appropriate services to those severely emotionally disturbed children in South Carolina whose needs are not being adequately met by existing services and programs. The scope of services includes a range of residential programs including therapeutic foster care.

You indicate that the statute is silent on the definition of foster care since the repeal of §20-7-1620 and §20-7-2380 of the Code of Laws of South Carolina (1976), in 1985. However, the placement setting you described falls within the definition of "foster home" as defined in §20-7-30 (8). This statute defines foster home as:

a household of one or more persons who are licensed or approved to provide full time care for one to five children, living apart from their parents or guardians.

The provision that provides for foster care review is found in §20-7-2376, which requires:

...review every six months but no less frequently than once every six months the cases of children who have resided in public foster care

for a period of more than four consecutive months and review every six months of the cases of children who have resided in private foster care for a period of more than six consecutive months to determine what efforts have been made by the supervising agency or child caring facility to acquire a permanent home for the child. (Emphasis added).

Although your question regarding the Foster Care Review Board's responsibility to review cases of emotionally disturbed children who are privately placed does not appear to be addressed specifically by statute, or case law, the statute does suggest the underlying policy and purpose of review by the Board.

Review by the Board is probably not statutorily required in situations where permanency for the child is not a consideration. It is uncertain whether a determination is required to ascertain that a placement is for treatment before concluding that a review pursuant to §20-7-2376 is not required.

This view is consistent with other functions of the Board as outlined in §20-7-2376, which include:

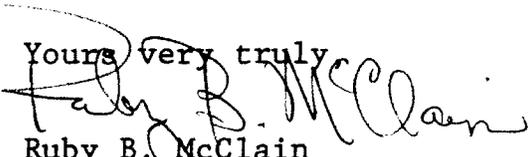
- (C) To encourage the return of children to their natural parents, except as provided in item (B) of this section, or, upon determination during a case review of the local review board that this return is not in the best interest of the child, to recommend to the appropriate agency, action be taken for a maximum effort to place the child for adoption.
- (D) To promote and encourage all agencies and facilities involved in placing children in foster care to place children with persons suitable and eligible as adoptive parents;
- (E) To advise foster parents of their right to petition the family court for termination of parental rights and for adoption and to encourage these foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child;
- (F) To recommend that a child caring facility or agency exert all possible efforts to make arrangements for permanent foster care or guardianship for children for whom return to natural parents or adoption is not feasible or possible as determined during a case review by the local review board.

Joyce L. Cheeks, Esquire  
February 29, 1988  
Page 3

The sections above address situations where potentially there is a severing of the parental relationship, and do not suggest a situation where a parent is seeking private treatment for a child with no other factors present that would suggest termination or relinquishment of the parental relationship.

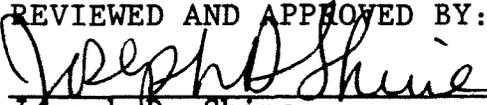
A practical approach may be to determine whether a child has been placed for treatment or other reasons. This decision is based on a case by case analysis of the facts. An affidavit, similar to the one submitted by private institutions in cases of summary review, submitted by the Continuum of Care should be helpful to the Board in making this determination. There is no requirement that the Continuum of Care complete such an affidavit; and this is probably a matter that should be legislatively addressed especially since the Continuum of Care was created after your review mandate was established. In the interim, you may wish to work with the Continuum of Care on providing you with an affidavit to ensure that the determinations you make on these reviews have sound factual bases.

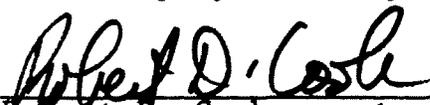
Yours very truly

  
Ruby B. McClain  
Assistant Attorney General

RBM/srcj

REVIEWED AND APPROVED BY:

  
Joseph D. Shine  
Chief Deputy Attorney General

  
Robert D. Cook  
Executive Assistant for Opinions

This opinion does not address any obligation for case review under §42 USC §675(5)(b) where foster care maintenance payments are involved.