

Hidden Foster Care:  
Statement of Principles on Extrajudicial State Regulation of Families

1. Family integrity is a fundamental right protected by the United States Constitution. Any proposed separation or agency-imposed restriction, including those portrayed as voluntary or that occur without court oversight, are restraints on liberty and must conform to Constitutionally required due process protections.
2. Circumstances related to poverty, race, or culture are never a valid reason for the state to separate families or impose other restrictions on families.
3. Agencies should never separate families or impose other restrictions when a child is not in imminent danger of harm due to abuse or neglect. When an agency cannot meet its burden in court to separate a family or impose other restrictions through the legal removal process, it should not do so outside of that process.
4. Parents have an absolute right to counsel whenever an agency seeks the separation of a child from their parents or other restrictions on the parent-child relationship.
5. Agencies have an affirmative duty to actively negotiate with the family and their counsel regarding the terms of the proposed arrangement and to identify community-based resources to address areas of concern or alleged grounds for separation.
6. Families and their counsel have the right to identify their own resource providers and are under no obligation to utilize providers under contract with the agency.
7. Alleged grounds for separation or areas of concern must be shared with parents and their counsel specifically and in writing at first contact.
8. Resources must be culturally responsive and narrowly tailored to address the specific areas of concern or alleged grounds for separation identified by the agency and parent. Agencies must not require unnecessary services or interventions unrelated to the areas of concern or alleged grounds for separation.
9. Parents should have a right to request a hearing related to the proposed arrangement.
10. Arrangements shall be temporary, brief, and time limited as negotiated between the agency and parents' counsel. Terms of the arrangement, including conditions for the return of the child, must be clear, understandable, and in writing.
11. Before a child is placed with a kinship caregiver under an agreement between the agency and parents, the agency shall provide the proposed kinship caregiver with written notice that sets forth: (a) the terms of the agreement, that that they are under no obligation to consent to care for the child pursuant to those terms, and that they have the right to decline to care for the child; (b) the rights, responsibilities, options, and resources available to them if they decide to care for the child; and (c) their right to consult with legal counsel and to have counsel represent them in connection with their decision whether to care for the child.
12. The agency has an affirmative obligation to assist the kinship caregiver to obtain any documentation or other resources necessary to care for the child and ensure the stability of the placement.

13. A kinship caregiver may decide not to care for the child at any time, and that decision alone shall not result in any adverse action against the caregiver, such as the bringing of a neglect case against the caregiver or future disqualification as a formal or informal resource for the child and family.
14. Seeking or facilitating parent-child separations outside of the legal removal process does not amount to reasonable efforts to preserve families or prevent removals by agencies.

*This document reflects consensus views of members of the Hidden Foster Care Working Group, a diverse coalition of advocates for parents, children, and kinship caregivers. These consensus views reflect the minimum steps that Working Group members envision in response to hidden foster care and should not be read as precluding individual members or individual jurisdictions from requiring more stringent regulation. Indeed, these views should not be interpreted to mean that, if implemented, they will meet the requirements of applicable federal and state laws without additional changes to a particular state's laws.*