



March 22, 2021

Administration for Children and  
Families, Office of Planning, Research, and Evaluation (OPRE)  
330 C Street, SW, Washington, DC 20201  
Attn: ACF, Reports Clearance Officer

Submitted via email to [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov)

**RE: 86 FR 6340**  
**FR Doc. 2021-01142, Filed on 1-19-2021**  
**Monitoring and Compliance For Office Of Refugee Resettlement Care**  
**Provider Facilities**

Dear Mary B. Jones,

The Florence Immigrant & Refugee Rights Project (“Florence Project”) submits these comments to indicate areas of concern with some of the newly proposed forms. With these comments, we urge ORR to improve their information collection aimed to uncover abuse of detained unaccompanied children and to ensure that the rights of children who speak less-common languages are protected.

Specifically, the Florence Project is concerned about the form of many of the questions used to elicit information from staff about possible abuse. Without specific guidance on questions that ask for information in broad terms and without additional narrow questions to gather more information, ORR’s information gathering in these forms will be inconsistent. Further, given that the vast majority of the unaccompanied children in ORR’s care are not native English speakers, the Florence Project strongly urges ORR to create standard professional translations of questions about abuse in Spanish, Portuguese, Mayan languages, and other languages commonly spoken in shelters so that each case manager does not have to render his or her own translation of each question. Standard translations will facilitate consistency and quality in information gathering.

**I. The Florence Project has a strong interest and is uniquely positioned to comment.**

Because of its decades-long history providing legal services to detained unaccompanied children (“UAC” or “unaccompanied children”), the Florence Project is uniquely positioned to comment on these proposals. Founded in 1989, the Florence Project is a 501(c)(3) non-profit organization that provides free legal and social services to adults and unaccompanied children facing immigration removal proceedings in Arizona. In 2019, the Florence Project provided services to approximately 10,000 adults and unaccompanied children. As the only 501(c)(3) non-profit organization in Arizona dedicated to providing free legal services to people in immigration detention, our vision is to ensure that every person facing removal proceedings has access to counsel, understands their rights under the law, and is treated fairly and humanely.

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The Florence Project provides an array of legal services to unaccompanied children in Arizona, including age-appropriate legal orientations and role play where children learn and then act out what will happen in immigration court. We offer direct representation of children in immigration court, the local juvenile courts, and before the U.S. Citizenship and Immigration Services (“USCIS”). We also have a robust *pro bono* representation program that includes referrals to local volunteer attorneys and continuous mentoring. The Florence Project has expertise providing trauma-informed legal services for unaccompanied children who have suffered trauma and/or violence. In addition, the Florence Project has a dedicated team of social workers who provide services to certain vulnerable detained unaccompanied children.

## **II. The commenting process lacked clarity and time to meaningfully review the impact that the proposed changes will have.**

The Florence Project did not have the opportunity to meaningfully review all of the proposed changes to the monitoring and compliance forms. First, the Florence Project and its partners lacked timely clarity from the government about whether these proposed changes were subject to the regulatory freeze announced by the Biden-Harris administration through Ronald A. Klain’s memorandum titled “Regulatory Freeze Pending Review” announced on January 20, 2021. It was not until late February that the Florence Project learned from its partners that these proposed changes were not subject to the freeze, giving Florence Project staff two weeks to prepare comments. In addition, the Florence Project’s capacity to respond to these changes has been cut by the numerous hours spent in litigating the unlawful actions of the Trump administration that continue to be before several federal courts. We are also working simultaneously to digest numerous other changes to immigration law and policy, including ICE’s 100-day moratorium and the Biden Administration’s proposed comprehensive immigration reform bill. Finally, the COVID-19 pandemic has affected our work on the ground tremendously. Our staff struggles daily with increased workloads, fewer resources, and daily obstacles ranging from inability to communicate with our clients to court delays and closures.

These circumstances have made it very difficult to comment on all aspects of the proposed changes, and as a result, ORR should extend the existing comment period by at least another 60 days. ORR should also issue more clear and concise guidance as to the purpose of each of these proposed changes as well as the interaction of each proposed change with the other current proposals.

## **III. These forms lack clarity about language access. ORR must create a comprehensive language access policy and apply it, without relying on forms that merely provide an instruction to render the information in a language the child can understand.**

Title VI of the 1964 Civil Rights Act and its implementing regulations prohibit discrimination on the ground of race, color, or national origin in any program or activity receiving federal financial assistance. The prohibition on national origin discrimination may be violated by practices that deny limited English proficient (LEP) individuals’ access to programs and activities by entities that receive government funds.

Executive Order 13166 extends to federal agencies the requirement to ensure that LEP individuals have meaningful access to the federal government’s own programs. It further states

that failure to provide adequate language services to LEP individuals is discrimination on the basis of national origin under Title VI of the 1964 Civil Rights Act.

Many of the proposed forms contain a requirement that the information be provided to the child in a language that the child can understand. *See, e.g.*, Forms 3-B; M-8A; M-8B; M-8D; M-9A, M-9B. However, without providing professional translations or audio interpretation of each form, this requirement is insufficient to ensure compliance with the Civil Rights Act.

Many of the forms merely couch linguistic access as an afterthought or “best practice.” For example, on Form M-8D, Secure and Staff Secure Addendum to Checklist, the forms states that “Best Practice: Documented in UAC Case File if UAC speaks language other than English or Spanish; and documented in UAC Case File that the NOP has been explained to UAC in a language that UAC understands.”

Because ORR is neither *requiring* that this information be provided to the child in a language that they understand nor providing subcontractors with accurate translations of the material that must be provided, children will receive incomplete, inaccurate, and unreliable information.

Linguistic access is a critical tool for gathering accurate information and furthering ORR’s core mission of providing care in the best interest of each unaccompanied minor. ORR should provide stronger guidance in its policy forms to:

- A. Accurately determine which language the child speaks and understands best using scientifically-validated questions and inquiries, not assuming that a child’s disclosure that they speak some Spanish or some English is sufficient to ensure complete understanding in those languages;
- B. Create written translations of all materials in languages frequently-spoken by unaccompanied children, incorporating plain language and low-literacy writing techniques throughout all written materials; and
- C. Along with written translations, create audio or video versions of all materials to broaden linguistic access for children whose languages are not written and for children with diverse reading abilities.
- D. Create fields on forms that identify the child’s best language and track the use of phone interpreters with the goal of conducting internal review to ensure that ORR staff are consistently providing information in a language that the child understands.

Without these crucial measures in place, ORR will not be able to ensure that any of the information it collects from children is accurate, nor will it be able to ensure that any of the information the ORR provides to children is understood. This lack of linguistic access marginalizes the children in ORR’s care and could result in a violation of both Executive Order 13166 and the Civil Rights Act of 1964.

#### **IV. ORR should apply forensic techniques to questions on all forms, especially those related to harm and abuse.**

Some of the forms here, including M-11C through M-11E, screen for possible abuse by ORR subcontractors. Preventing physical, sexual, and psychological abuse while children are in ORR custody is deeply important to the Florence Project. As the legal services provider at Southwest Key's Kokopelli shelter, we provided legal services to many of the victims of a former youth care worker who abused young men in his care.<sup>1</sup> We saw first-hand how easily abuse can happen in shelters, especially among youth who have suffered past trauma and have fewer options for reunification. This abuse resulted in deep and serious harm to many of our clients, many of whom also testified against their abuser at his trial.

Many of ORR's questions appear to lack a consistent, forensic-based approach to elicit information about abuse and harm from children and the people who care for them. For example, M-11E asks whether case managers have any concerns about their co-workers. The form states, "Do you have any concerns about the treatment of UACs in care?" It also states, "Do you have concerns about any particular staff members (any staff members you think should NOT be working with UAC)?"

First, ORR should provide the purpose of the interview, what will happen with the information provided, and why it is important to disclose concerns about potential abuse. Second, while these questions could provide a helpful start toward allowing staff members to report concerning behavior, they are questions that can be answered with a "yes" or "no" response and are not written to elicit more than that. ORR should re-write questions using best practices for forensic interviewing. Third, ORR should provide further follow-up questions if a case manager, clinician, or other subcontractor discloses that they feel that a co-worker has behaved inappropriately. Unless and until these resources are provided, follow-up will be at the discretion of the individual interviewer. For example, using the questions listed in these forms as written, a case worker could indicate "yes" to the question that they have a colleague who they believe exhibits concerning behavior, but the interviewer would not have written guidance to how conduct follow-up to that response. All interviewers, regardless of their seniority and/or expertise, should be provided with the adequate tools. The lack of guidance in the proposed forms will likely create inconsistent results.

In sum, ORR should provide a list of questions to use to further elicit feedback and information, as well as more information to interviewees about the purpose and nature of these interviews.

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<sup>1</sup> Mike Cruz, *Former youth care worker at Southwest Key migrant shelter sentenced to prison*, AZ REPUBLIC, (Feb. 1, 2019) <https://www.azcentral.com/story/news/politics/immigration/2019/02/01/former-youth-care-worker-southwest-key-migrant-shelter-sentenced-prison/2746723002/>

**V. ORR should apply trauma-informed methods to obtain information from children on all forms, especially those related to harm, abuse, potential incidents, and a child’s personal history.**

Some of these forms, including those mentioned above regarding investigation techniques, will often elicit information from children about past trauma. Unaccompanied children are considered to be particularly vulnerable, which is why the suite of laws known as the Trafficking Victims Protection Reauthorization Act (TVPRA) direct a broad swath of the federal government, including the Department of Health and Human Services and the Department of Homeland Security to “establish policies and programs to ensure that unaccompanied alien children in the United States are protected from traffickers and other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.” 8 U.S.C. § 1232(c)(1). The Florence Project has further seen the effects of trauma on these children, including physical and mental manifestations that negatively impact a child’s welfare.

In light of these vulnerabilities, the Florence Project recommends that all questions posted to children be conducted in a trauma-informed manner. Each proposed form soliciting information from these children regarding incidents or past experiences should include specific instructions or reference ORR’s established guidance on using trauma-informed approaches to solicit information from children.

**VI. Specific concerns about selected forms**

This section details our concerns with specific forms. As noted above, because of the confusion around whether these forms would be subject to the regulatory freeze and the short time for reviewing these forms, these concerns may not be a comprehensive list of all of the Florence Project’s feedback.

- **Checklist for a Child Friendly Environment - Care Provider Facility (Form M-4A)**

The form notes that ORR will provide “mirrored windows in offices where staff and visitors meet with youth 1:1” and “preprogrammed phones that provide some level of privacy and are accessible to youth.”

The Florence Project strongly urges ORR to provide children and legal services providers with confidential spaces where children have privacy and confidentiality. Mirrored windows that allow others to see into those spaces undermines a child’s sense of safety and trust. We strongly urge ORR to require provision of private meeting spaces for screenings and conversations with attorneys and legal services providers without use of screens, mirrored windows, or open spaces that could allow for the conversation to be monitored. We further urge ORR to provide children with access to confidential phones when speaking with legal services providers. The term “some level of privacy” is vague and should not be used, especially as applied to the provision of phones for legal calls.

- **UAC Incident Review (Form M-5A) and Adult Incident Review (Form M-5B)**

Both forms allow for indication of an incident report made to DCS, State Licensing, law enforcement, DOJ, and HHS/OIG. These reports are crucial tools to trigger investigations. Further clarity on the form about which agency must be notified in which situation would be helpful in order to ensure rapid reporting to all relevant parties.

- **UAC Case File Checklist (Form M-8A) LTFC Case File Checklist (Form M-8B)**

ORR should clarify whether these forms are available to children in the language they speak and understand best.

- **Secure and Staff Secure Addendum to Checklist (Form M-8D)**

As noted above, ORR must provide written translations as well as audio interpretation to all children, including speakers of languages other than English and Spanish. Instructions telling case managers to include “Documentation that UAC was informed in a language that UAC understands...” is vague and not specific enough to ensure that children receive and understand this crucial information.

- **Medical Coordinator Questionnaire (Form M-11I)**

As a follow-up question to “How do you accommodate a child with special health care needs or medication requirements?” the Florence Project recommends the addition of a question about what steps medical coordinators and staff take to obtain consent from children who are being asked to take medication, including detailing what information the child has been provided with, whether the information was in the child’s best language, and what the child understands about the medication’s purpose and length of prescription.

## **Conclusion**

The Florence Project thanks ORR for the opportunity to provide the enclosed comment and encourages ORR to incorporate the feedback provided here.

Submitted on behalf of the Florence Immigrant & Refugee Rights Project  
On March 22, 2021, by

*/s/ Laura Belous*  
Laura Belous, Esq.  
Advocacy Attorney