

	JUVENILE JUSTICE SERVICES	Effective Date: 7/31/2010
	Client Rights and Services	Issue Date: 7/31/2010
	Title: Client Right to Correspondence	
	Procedure #: P.20.12	

1 ISSUING AGENCY Children, Youth and Families Department (CYFD)

2 SCOPE Juvenile Justice Service (JJS)

3 STATUTORY AUTHORITY NMSA 32A-2-1, 32A-2-2.E

4 FORMS None

5 APPLICABLE POLICY NMAC 8.14.20.12

CLIENT RIGHT TO CORRESPONDENCE: To maintain ties with the community, clients in the care and custody of JJS have the right to send and receive written correspondence with members of their family and other persons or organizations subject only to the limitations necessary to maintain order and security of the facility. Clients are also allowed to send and receive packages subject to procedure. [8.14.20.12 NMAC - N, 6/1/2010]

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7 DEFINITIONS

7.1 **“Contraband”** means objects or items which are unlawful or which threaten the security of the facility. Each facility shall provide to each facility client and the parent/guardian/custodian a copy of a list of what constitutes contraband items. This list shall include but not be limited to: weapons or objects that might be made into weapons, controlled substances including prescription medications that are not prescribed and distributed by facility personnel, escape plans, and plans for or incitement to any activity which is unlawful or which threatens the security of the facility.

7.2 **“Emergency situations”** are situations which cause any significant disruption of normal facility or agency procedures, policy, or activity caused by riot, escape, fire, natural disaster, employee or client action, or other serious incident that significantly affects the ability of staff to distribute mail or packages within the timeframes set forth in this policy.

7.3 **“Non-privileged mail”** means any and all mail that is not privileged mail as defined herein.

- 7.4 **“Obscene”** means content or material the dominant theme of which, taken as a whole, appeals to the prurient interest or is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and lacks serious literary, artistic, political or scientific value. The use of “swear words,” foul language, etc., standing alone, does not constitute obscenity.
- 7.5 **“Privileged mail”** means written communication or mail between (to or from): a client and an attorney who represents the client or with whom the client is discussing potential representation; a client and child advocacy group(s); a client and a judicial officer (judge) of a federal, state or tribal court; a client and a state, federal or tribal public official, or a client and the ombudsman. The use of the term “privileged” in these procedures does not establish any legal or evidentiary privilege that does not otherwise exist under the law.
- 7.6 **“Prohibited material”** means any inappropriate objects or items that a client is prohibited from possessing while in the facility. Each facility shall provide to each facility client a copy of a list of what constitutes prohibited material. This list shall include but not be limited to: obscene materials, gang signs or symbols or messages written in code, and any material which threatens the security of the facility.
- 7.7 **“Reasonable cause”** means knowledge by the Superintendent or any member of the facility staff of articulable facts, together with rational inference based on those facts, that would lead a reasonable person to believe that a client has committed an act or is planning an act that is prohibited by law or by CYFD facility procedures, or that an envelope or package contains contraband or prohibited material as defined by these procedures, or that a communication that appears to be privileged is not in fact a privileged communication.

8. GENERAL PROVISIONS FOR CLIENT COMMUNICATIONS.

- 8.1 These procedures will be provided to each client upon admission to the facility and prominently posted on bulletin boards in areas of the facility that are commonly used by clients.
- 8.2 Staff will give a copy of these procedures to non-clients upon request.
- 8.3 Clients have the right to communicate or correspond with persons or organizations subject only to these procedures, which are designed to balance the client’s right to correspond with others against the need of the institutional staff to maintain the security of the facility and the health and safety of the clients and staff.
- 8.3.1 Attorneys who represent the client or with whom the client is discussing potential representation, clergy, Juvenile Probation Officers, representatives of child advocacy groups, judicial or public officials, parents, siblings, grandparents, legal guardians or custodians, incarcerated and non-incarcerated relatives, non-incarcerated partners, privileged entities as detailed in this procedure, and children of the client shall be permitted to have written and telephonic communication with clients. A list of the persons who satisfy each of these types of contacts shall be immediately compiled for each client upon admission to the facility and regularly be updated to ensure that clients are not impeded in their efforts to communicate with these persons.
- 8.4 Items not on a facility’s list of contraband or prohibited material will not be seized without a basis to believe they constitute a threat to the security of the facility.
- 8.4.1 Such determination must be documented in writing in the client’s master file and will require review and approval by the JJS Director/designee.
- 8.5 Messages are not presumed to be written in code solely because they are not in English or because they are not written in a traditional manner.

- 8.6 Under no circumstance is a staff permitted to black out or otherwise alter or remove any part of a written communication to or from a client.
 - 8.7 Any basic communication privilege, as described in this procedure, is never withheld or used as punishment, denied as a means of reducing privileges, or restricted for disciplinary reasons. Clients may be given additional privileges based on positive behavior.
9. **LIMITATIONS ON PERSONS WITH WHOM CLIENTS MAY COMMUNICATE**
- 9.1 Clients may communicate/correspond with any person on their MDT-approved contact list, except as limited below. Based on clients individual program needs, clients may have other contacts as permitted by their MDT. Upon arrival at the facility and until the client's first MDT, the client's initial approved contact list is provided by the JPPO at intake.
 - 9.2 The MDT reviews client requests to communicate with individuals not on the client's contact list, and makes decisions for approval/disapproval. Once a decision has been made by the MDT, the MDT provides the client's updated approved contact list to the Superintendent/designee, who then provides it to control. Any time a client request for contact has been denied by the MDT, the client shall be informed of their grievance rights and shall be given the opportunity to file a grievance.
 - 9.3 If the client's MDT is not immediately available, clients may receive permission from their Case Manger or the Superintendent/designee to contact educational, vocational, and other necessary persons to facilitate their educational, vocational, or other programming goals. All such short-term contact approvals shall be forwarded to the client's MDT for notification and approval.
10. **GENERAL PROCEDURES FOR ALL INCOMING MAIL**
- 10.1 A central location will be established within the facility for handling incoming mail.
 - 10.2 Mail is never to be censored; it is either delivered or it is rejected, and if rejected it is either seized or returned to sender, as described in these procedures.
 - 10.3 There is no limitation on the volume of mail that a client may send or receive.
 - 10.3.1 The facility will pay postage for up to two (2) personal mail items per week and two (2) privileged mail items per week for each client, as defined below. The facility may pay for more than two (2) privileged items per week for clients who establish a financial need for that assistance or who earn extra privileges.
 - 10.4 Clients must be informed of the circumstances under which staff may open, inspect, read or reject mail, or the contents of envelopes or packages sent or received as mail, as provided in these procedures.
 - 10.5 Mail may, under circumstances described in these procedures, be subject to opening, seizure of enclosed contraband or prohibited materials, or reading to determine if its content is unlawful, contraband or prohibited material.
 - 10.6 Staff designated by the Superintendent to handle incoming mail will process all incoming mail at the central location.
 - 10.6.1 Staff will process incoming mail as expeditiously as possible.
 - 10.6.2 Staff will log incoming client mail and packages in the client record.
 - 10.6.3 Staff will distribute mail within twenty-four (24) hours of receipt, excluding days on which the United States Postal Service does not deliver mail to the facility and emergency situations.
 - 10.6.4 Staff will distribute packages within forty-eight (48) hours of receipt, excluding days on which the United States Postal Service does not deliver mail to the facility and emergency situations.

10.6.5 Staff will return to the sender within forty-eight (48) hours of receipt, excluding days on which the United States Postal Services does not deliver mail to the facility and emergency situations, any materials not given to client and not seized as contraband.

11 ADDITIONAL PROCEDURES FOR INCOMING PRIVILEGED MAIL

11.1 Staff will inspect the outside of an unopened incoming envelope or package to determine if it appears to be privileged mail.

11.1.1 Privileged mail that is addressed to the facility without properly identifying the client recipient, such that it is impossible for staff to determine the proper recipient, shall be returned to the sender.

11.2 If staff determines that incoming mail is apparently privileged mail, staff will do the following:

11.2.1 In the absence of reasonable cause, as determined by the Superintendent/designee, to believe that apparently privileged incoming mail contains contraband or objects that constitute prohibited material or is in fact not a privileged communication, staff will give the privileged mail unopened to the addressee client.

11.2.2 If staff has reasonable cause to believe that incoming privileged mail is in fact not privileged, they shall make a good faith effort to determine whether it is privileged without opening the mail. Good faith efforts shall include, as appropriate to the circumstances, contacting the office of the sender.

11.2.3 If the Superintendent/designee has reasonable cause to believe that an envelope or package marked as privileged mail contains enclosed contraband or objects that constitute prohibited material, or is in fact not a privileged communication, staff will arrange for the client to whom the mail is addressed to come to the central location designated for handling mail, before doing anything else with the mail.

11.2.4 If the Superintendent/designee has a reasonable cause to believe that the mail contains enclosed contraband or objects that constitute prohibited material, staff may ask the client to open the envelope or package, and remove the contents for the purpose of determining whether the mail contains contraband or objects that constitute prohibited material. If the staff determines that the mail does not contain any contraband or prohibited material, the client will retain the mail.

11.2.5 If otherwise privileged mail is found to contain enclosed contraband, staff will seize the contraband objects or material, and return the communication (letter, note, etc.) to the sender with a note from staff explaining:

11.2.5.1 that contraband was found in the mail and that it was seized;

11.2.5.2 that the mail itself is being returned to the sender who may re-send it to the client in a proper manner (without contraband) ;
and

11.2.5.3 if it appears that a violation of law has occurred and the matter is, or will be, referred to law enforcement that the contraband is being sent to law enforcement with a referral for appropriate action.

11.2.5.4 A copy of the note from staff to the sender will be given to the client and a copy filed in the client's master file.

11.3 If otherwise privileged mail is opened based on reasonable cause as described above, and is found to be from a privileged source but to contain enclosed objects that constitute prohibited material, staff will seize the prohibited material, the client will retain the communication itself and send a note to the sender explaining:

- 11.3.1 that prohibited material was found in the mail and seized; and that the prohibited material is being logged into and stored in a central depository within the facility and not sent on to the client, and that the letter itself was given to the client.
- 11.3.2 A copy of the note from staff to the sender will be given to the client and a copy filed in the client's master file and in the Control Center file. The prohibited material referred to in this Section means objects enclosed with a privileged communication; it does not refer to the communication itself.
- 11.4 When the Superintendent/designee has reasonable cause to believe that apparently privileged incoming mail is in fact not a privileged communication (such as where there is reasonable cause to believe that the mail is not actually from the privileged sender identified on the face of the envelope) staff asks the client to open the item and provide information sufficient for the staff to determine whether it is or is not a privileged communication. If the mail does in fact appear to be a privileged communication, the client will retain the mail.
 - 11.4.1 If mail is opened based on reasonable cause as provided above, and is found not to be a privileged communication, then staff will inform the client who may request that the mail be returned to the sender, or give permission for the staff to handle the mail in accordance with procedures for non-privileged mail.
- 11.5 Without the express consent of the client, privileged mail should not be scanned or read under any circumstances. At the request of the client, staff may view the letterhead on which the communication is written, to assist in determining the privilege.

12 ADDITIONAL PROCEDURES FOR INCOMING NON-PRIVILEGED MAIL

- 12.1 Staff will open all incoming non-privileged letters and packages each working day, in the presence of the client addressees, to check for cash or personal checks, enclosed contraband, or other enclosed prohibited material. The mail itself will not be read except as provided below. All package contents are inventoried to the client and documented in the client record.
- 12.2 Personal checks and cash are not accepted, and are returned to sender, with notice given to the client that only cashiers checks and money orders may be received by clients. Cashiers checks and money orders are placed in the client's account.
- 12.3 Contraband items other than items listed above (money) are seized, and any other communication (letter, note) received with contraband, which is not itself contraband or prohibited material, is returned to the sender with a note from staff explaining:
 - 12.3.1 that contraband or prohibited material was found in the mail and that it was seized.
 - 12.3.2 that the communication itself is being returned to the sender who may re-send it to the client in a proper manner (without contraband or prohibited material; and.
 - 12.3.3 if it appears that a violation of law has occurred and the matter is, or will be, referred to law enforcement that the contraband is being sent to law enforcement with a referral for appropriate action.
 - 12.3.4 A copy of the note from staff to the sender will be given to the client and a copy filed in the client's master file and in the Control Center file.
 - 12.3.5 Contraband seized from an incoming letter or package may result in the revocation or suspension of the sender's correspondence privileges (except for privileged communications, as provided above).
 - 12.3.6 Contraband that is illegal, such as weapons or drugs, will result in referral for prosecution. Violation of postal laws may also result in referral for prosecution.

- 12.3.7 A document stating that contraband or prohibited material was seized and the reasons for seizing it will be placed in the client's master file, with copies sent to the client and the sender of the confiscated material.
- 12.4 Prohibited materials are seized. Prohibited material which is not prohibited by law or evidence of a crime or delinquent act, but is not authorized to be in the client's possession while at the facility, is returned to the sender. The client is informed of the action taken and the reasons for the action taken:
- 12.5. Only the Superintendent/designee may read mail, and only when there is reasonable cause to believe that the mail communication itself (as opposed to other contents of an envelope or package) constitutes contraband or prohibited material, or constitutes a crime or delinquent act or evidence of a crime or delinquent act:
 - 12.5.1 When such mail is read, with reasonable cause, the Superintendent/designee who has actually read the mail will prepare a memo to the client stating the reasons justifying the reading of the mail, and what action was taken and the reasons for it.
 - 12.5.2 Evidence that a client's mail from a particular recipient has, within the preceding ninety (90) days, contained contraband or prohibited material or constituted a delinquent act or crime in and of itself may be considered in determining whether reasonable cause exists for reading a client's mail from that recipient.
- 12.6 Incoming mail that has been read, pursuant to reasonable cause as described herein, will be rejected by the Superintendent/designee when there is reasonable cause after reading the mail to conclude that it contains or constitutes contraband or prohibited material.
 - 12.6.1 Mail may not be rejected solely because it contains language that is offensive (e.g., foul language, etc.), but which does not meet the definition of "obscene" under these procedures.
 - 12.6.2 When incoming mail is rejected, the client and the person sending the mail to the client will be notified in writing of the reason for the rejection.
 - 12.6.3 Mail that has been rejected based on the criteria set forth in these procedures is returned to the sender with a letter from the Superintendent/designee specifying why the mail was read and why it was rejected, unless the mail in and of itself constitutes a criminal act or evidence of a criminal act, in which case it will be seized and provided to law enforcement, with notice to the addressee client and to the sender that this has occurred.
 - 12.6.4 The client whose incoming mail is rejected may object to and contest the action through the client grievance procedures. Any sender whose mail to a client is rejected must also be given an opportunity to object to such action.
- 12.7 Individuals who send contraband or prohibited material to clients through the mail may have correspondence privileges suspended or revoked, except for privileged communications, and may be referred for criminal prosecution for violations of law, including violations of postal laws.
- 12.8 Staff will prepare a memo or letter documenting the items withheld from a client and place the letter in the client's master file, with a copy sent to the sender and to the client.

13 PROCEDURES FOR OUTGOING PRIVILEGED MAIL

- 13.1 Outgoing privileged mail must be clearly marked "privileged communication" on the face of the envelope by the client.
- 13.2 In the absence of reasonable cause to believe that that apparently privileged outgoing mail contains contraband or objects that constitute prohibited material, or is in fact not a privileged communication, the client will seal the mail and staff will accept it for mailing.
- 13.3 When the superintendent/designee has reasonable cause to believe that outgoing privileged mail contains contraband or objects that constitute prohibited material, staff

asks the client to remove the contents of the mail for the purpose of determining whether the envelope or package contains contraband or objects that constitute prohibited material.

13.3.1 If contraband or objects that constitute prohibited material are found in the envelope or package, they shall be removed and seized.

13.3.1.1 The privileged communication itself will not be read and will be mailed to the addressee.

13.3.1.2 The Superintendent/designee shall provide the client and the addressee with written notice of the seizure of any items.

13.3.1.3 The notice shall identify the items that have been seized and the reason for the seizure, and provide information about how to contest the seizure of the items.

13.4 When a Superintendent/designee has reasonable cause to believe that apparently privileged outgoing mail is in fact not a privileged communication (such as where there is reasonable cause to believe that the mail is not actually to the privileged sender identified on the face of the envelope) staff asks the client to provide information sufficient for the staff to determine whether it is or is not a privileged communication.

13.4.1 If the mail does in fact appear to be a privileged communication, it will be mailed.

13.4.2 If not, it will be returned to the client or treated as outgoing non-privileged mail, at the client's option.

13.4.3 The privileged mail should not be scanned or read under any circumstances;

14 PROCEDURES FOR OUTGOING NON-PRIVILEGED MAIL

14.1 Clients will bring outgoing mail unsealed to the designated on-duty staff.

14.2 The client will permit the staff member to inspect the envelope or package for enclosed contraband or prohibited material. The mail itself will not be read, except as provided below.

14.3 If the envelope or package does not contain or constitute contraband or prohibited material, the client will then seal the envelope or package in the presence of staff, and it will be mailed.

14.4 If the envelope or package (not the communication therein) does contain or constitute contraband or prohibited material, the contraband or prohibited material will be seized, and the communications contained in the envelope or package will be returned to the client, except as provided below where there is reason to read the mail.

14.5 Staff will ensure that the outgoing mail has a complete name and address, including zip code, for both the sender and the recipient.

14.6 Reading of outgoing non-privileged mail:

14.6.1 Mail may be read only by the Superintendent/designee, only when there is reasonable cause to believe that the mail communication itself (as opposed to other contents of an envelope or package) constitutes contraband or prohibited material, or constitutes a crime or delinquent act or evidence of a crime or delinquent act.

14.6.2 When such mail is read, with reasonable cause, the Superintendent/designee who has actually read the mail will prepare a memo stating the reasons justifying the reading of the mail, and what action was taken and the reasons for it.

14.6.3 Evidence that a client's mail has, within the preceding ninety (90) days, contained contraband or prohibited material or constituted a delinquent act or crime in and of itself may be considered in determining whether there is reasonable cause for reading a client's outgoing non-privileged mail.

- 14.6.4 When all the mail of a particular client is read, the Superintendent/designee documents the specific reasons for this practice.
 - 14.7 Rejection of outgoing non-privileged mail that has been read:
 - 14.7.1 Outgoing non-privileged mail that has been read pursuant to reasonable cause as described herein, will be rejected by the Superintendent/designee, when there is reasonable cause after reading the mail to conclude that it contains or constitutes contraband or prohibited material.
 - 14.7.2 Mail may not be rejected solely because it contains language that is offensive (e.g., foul language, etc.), but which does not meet the definition of “obscene” under these procedures.
 - 14.7.3 When outgoing non-privileged mail is rejected, the client will be notified in writing of the reason for the rejection. The client whose outgoing mail is rejected may object to and contest the action through the client grievance procedures.
 - 14.8 If an objection is received from any person, or from the parent, legal guardian or custodian of a client, to receiving mail from a JJS facility client, all mail addressed by a client to such person shall be returned unopened to the sending client, who will be informed of the objection and that such mail will not be permitted to be sent.
 - 14.9 Staff shall maintain a secure log of persons who have objected, and minors whose parent, guardian or custodian has objected, to receiving mail from a JJS client.
15. PUBLICATIONS
- 15.1 Clients may access publications, at their cost, as long as they do not:
 - 15.1.1 contain obscene material;
 - 15.1.2 depict or describe procedures for construction of or use of ammunition, bombs, incendiary devices, or weapons;
 - 15.1.3 depict, encourage or describe escape plans or contain blueprints, maps, drawings of similar facilities;
 - 15.1.4 depict or describe procedures for producing alcoholic beverages or manufacturing drugs; or
 - 15.1.5 advocate or espouse materials that promote racial or ethnic hatred, prejudice, gang activities or violence.
 - 15.2 Used publications are not accepted. Materials must come directly from the publisher.
 - 15.3 Pages may not be removed from publications. Removed pages are subject to confiscation.
 - 15.4 Pages may not be posted in any area.
16. FORWARDING OF MAIL
- 16.1 When clients are released from or transferred from a facility, their first class mail is forwarded within twenty-four (24) hours of receipt.
17. PACKAGES
- 17.1 All clients may receive one (1) package during December and two (2) weeks prior to their birthdays.
 - 17.2 All packages must be sealed in the original manufacturer’s packaging and/or manufacturer’s safety seals.
 - 17.3 All foodstuffs are subject to review by medical and dietary personnel as it pertains to the individual client.
 - 17.4 Packages are delivered to clients within forty-eight (48) hours of receipt.
 - 17.5 Packages are subject to the same inspection guidelines as mail.
 - 17.6 Packages that include food items are limited to the following and will only be distributed two (2) times per year.
 - 17.7 Food items include:

- 17.7.1 One (1) bag, not to exceed thirteen (13) oz. of candy. Candy items may not include items that have sticks or accompanied by any other non-food items and may not include chewing gum or chewing gum products.
- 17.7.2 One (1) package of cookies, not to exceed eighteen (18) oz.
- 17.7.3 Two (2) packages of jerky, not to exceed a total of 20 oz. combined.
- 17.7.4 Two (2) bags of chips, not to exceed thirty (30) oz. combined.
- 17.8 Clients may receive more packages based on positive behavior.
- 17.9 Any packages containing items not meeting these guidelines will be returned to sender with a letter explaining why.

18. NOTICE AND OPPORTUNITY TO OBJECT

- 18.1 When any action is taken to limit a client's communication (including limitations on sending or receiving mail; denials on sending or receiving packages; denials of, or restrictions on, access to the phone; and denials of, or restrictions on, visits) the client and any other party affected by the action will be notified in writing as to the reason for action. The client may contest the action through the client grievance procedure.

19. AUTHORIZED SIGNATURE:



APPROVED: _____

Bill Dunbar, Cabinet Secretary
Children Youth and Families Department