§ 131D-10.2A. Reasonable and prudent parent standard.

(a) The reasonable and prudent parent standard is the standard characterized by careful and sensible parental decisions that are reasonably intended to maintain the health, safety, and best interests of the child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

(b) Every child care institution shall designate an on-site official who is authorized to apply the reasonable and prudent parent standard pursuant to this section.

(c) A caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child care institution where the child is placed, or the county department of social services, must use the reasonable and prudent parent standard when determining whether to allow a child in foster care to participate in extracurricular, enrichment, and social activities.

(d) A caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, may be held liable for an act or omission of the child if the caregiver fails to act in accordance with the reasonable and prudent parent standard under this section. To the extent it may be applicable, the liability of a county department of social services, or the Department of Health and Human Services, shall be strictly adjudicated according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified immunities of public officials acting in the course and scope of their employment.

(e) Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, exercising the reasonable and prudent parent standard has the authority to provide or withhold permission, without prior approval of the court or a county department of social services, to allow a child in foster care, in the custody of a county department of social services, or under the placement authority of a county department of social services through a voluntary placement agreement to participate in normal childhood activities. Normal childhood activities shall include, but are not limited to, extracurricular, enrichment, and social activities and may include overnight activities outside the direct supervision of the caregiver for periods of over 24 hours and up to 72 hours.

(f) The caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child care institution where the child is placed, shall not be liable for injuries to the child that occur as a result of acting in accordance with the reasonable and prudent parent standard.

(g) The immunity provided in subsection (f) of this section does not apply if it is determined that the injuries to the child were caused by gross negligence, willful and wanton conduct, or intentional wrongdoing, or arose out of the operation of a motor vehicle. Any liability under this subsection that may be attributable to either the county department of social services or the Department of Health and Human Services shall be strictly adjudicated according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified immunities of public officials acting in the course and scope of their employment.

(h) For any action under this section, the burden of proof with respect to a breach of the reasonable and prudent parent standard shall be by clear and convincing evidence. (2015-135, s. 2.1.)