



COMMONWEALTH OF VIRGINIA
Virginia Board for People with Disabilities

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October 31, 2012

Phyllis Parrish, Policy Team Leader
Division of Family Services
Department of Social Services
801 East Main Street
Richmond, Virginia 23219

RE: New Permanency Services Regulations

Dear Ms. Parrish:

The Virginia Board for People with Disabilities would like to provide brief comment on the proposed new permanency services regulations. As you may know, the Board serves as the Commonwealth's Developmental Disabilities Council. As such, we have an interest in policies that affect youth with developmental and other disabilities, many of whom are in the foster care system. Although our focus is on those youth with disabilities, we share a deep concern about the adequacy of supports to all youth in foster care that help ensure a successful adulthood. Our comments are made by regulation section. The Board's most significant concern relates to 22VAC40-201-70, Foster Care Goals, Subsection E-2.

22VAC40-201-40, Foster Care Placements, Subsection A-2 reads: *"The local department shall place the child in the least restrictive, most family-like setting consistent with the best interests and needs of the child."*

Comment: The Board applauds inclusion of this requirement. Training will be critical to ensure that local DSS staff are kept up to date about the available services and supports that will ensure the most integrated setting for children, including those with disabilities in the foster care system.

Virginia's Developmental Disabilities Council

22VAC40-201-60, Assessment.

Comment: This section focuses on the requirements for initiating foster care services. The Board is concerned about the lack of reference in this section or elsewhere in the regulations of the worker's responsibility to obtain or to seek professional evaluations from medical, psychological or other healthcare professionals. Individualized services must be based on comprehensive assessments by qualified professionals. While taking a social history is part of an assessment, we suggest that obtaining appropriate evaluations of the child or the child's parents be identified as a specific task during the assessment process and so stated in the regulations.

22VAC40-201-70, Foster Care Goals, Subsection E-2

Comment: The Board is concerned about the rationale for this section and the assumption that a child may require facility-based services specifically because of his or her disability. As written, subsection E-2 "Requires long-term residential care for the condition" without further guidance, this criterion is very broad and open to subjective judgment. With appropriate community services and supports, youth—and adults—with even the most significant disabilities are able to live in homes (natural family or foster care). Current language appears to be based on a broad assumption that "long-term" residential care—rather than short-term—is required for certain conditions. This is inconsistent with the Olmstead Supreme Court decision and the work being undertaken under the Commonwealth's settlement agreement with the Department of Justice. The Board strongly recommends that:

- E-2 be revised to read, "There is documentation that: a) the child received formal assessments of their functional abilities by a qualified, licensed professional as part of the foster care plan; b) all less restrictive alternatives, which included appropriate, individualized services and supports, have been attempted; and c) those alternatives were proven unsuccessful."
- Add a Subsection E-3 to read as follow: "A determination has been made that a) residential placement will improve the child's health and functional abilities; b) the child's status will be monitored every 30 days to assess health and progress; c) a written discharge plan will be developed at the time of placement setting forth steps for transition to a less restrictive setting; and d) that plan will be reviewed at least every 60 days and if transition is not feasible, a justification for continuing the residential placement will be documented."

22VAC40-201-130, Closing the Foster Care case. Subsection A-1, A-3

Comment: Specific to circumstance A-1, the Board is concerned that the age for termination from foster care remains at age 18 for all youth, and that none of the circumstances listed include criteria regarding the individual youth's emotional development, strengths, skills and support needs. The Board understands that a sizeable proportion of former foster care youth are found to be homeless within a few years of termination. That finding

should prompt reconsideration of these criteria. Age, in and of itself, should not be the determining factor. Since youth with significant disabilities may be in school until age 22 under the federal Individuals with Disabilities Education Act (IDEA), we recommend that DSS consider adoption of age 21 (up to the 22nd birthday) as the upper limit for termination of foster care services. We recognize individuals receiving foster care services who are 18 or older (and who are legally competent) would have to consent to continued receipt of these services. Similarly, specific to circumstance A-3, we recommend that when a voluntary placement has expired or has been revoked, a re-assessment of the youth's needs be conducted for planning service needs and ensuring appropriate supports are in place.

Thank you for this opportunity to provide comment. If you have any questions or need further information, please contact me at 804-786-9369 or by email at Heidi.Lawyer@vbpd.virginia.gov.

Sincerely,



Heidi L. Lawyer

Cc: Martin Brown, Commissioner-DSS
John Kelly, VBPD Board Chair