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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-201
Regulation title(s)	Permanency Services-Prevention, Foster Care, Adoption and Independent Living
Action title	Amend Permanency Regulation 2016
Date this document prepared	April 18, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Permanency regulation, 22VAC40-201, encompasses the full range of services for prevention, foster care, adoption and independent living services. The regulation provides local departments of social services (LDSS) with rules for the provision of child welfare services consistent with the Code of Virginia and federal law. Substantive amendments and other changes to this regulation are those required by legislation affecting the Code of Virginia in 2016 and by the Federal Preventing Sex Trafficking and Strengthening Families Act of 2014. These are described below. The intent of this action is to make the regulation consistent with current Code of Virginia and federal laws, and to make any other changes the agency deems necessary after comments and review.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- APPLA- Another Planned Permanent Living Arrangement
- AREVA- Adoption Resource Exchange of Virginia
- CSA- Children’s Services Act
- DJJ- Virginia Department of Juvenile Justice
- ICPC- Interstate Compact on the Placement of Children
- LCPA- Licensed Child Placing Agencies
- LDSS- local department of social services
- PFC-Permanent Foster Care
- Title IV-E- the title in the federal Social Security Act that authorizes the use of federal funding for foster care and adoption
- VDSS- Virginia Department of Social Services

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-201, Permanency Services-Prevention, Foster Care, Adoption and Independent Living, on April 18, 2018.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

The legal basis for this action is § 63.2-217 of the Code of Virginia. This statute provides the authority for the State Board of Social Services to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Throughout Title 63.2, there are requirements for regulations to be developed to implement permanency services. This regulatory action will provide a comprehensive and accurate structure for the provision of these services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary for protecting the welfare of children in foster care because it addresses issues such as service planning, notification of relatives, factors to consider in placement, adoption assistance, and many other provisions intended to ensure the wellbeing of the child. The purpose of this proposal is to make the regulation consistent with current Code and federal laws, and to make any other changes deemed necessary to ensure the accuracy and clarity of the regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

This regulatory action incorporates technical corrections, language and processes necessary to ensure consistency between the Code of Virginia and federal law, and address requirements that have been passed into law since the introduction of the current Permanency Services regulation. This includes adding the definition of sibling and the requirement to notify parents of siblings when a child enters foster care; adding the definition of reasonable and prudent parenting standard and the definition of prior family, which limits permanency goals of Another Planned Permanent Living Arrangement (APPLA) and Permanent Foster Care (PFC) to youth age 16 and over; establishing standards for normalcy for children in foster care; ensuring that children age 14 and older in foster care are actively involved in the development of their foster care plans, are provided with an opportunity to choose two members of their planning team, are presented with a youth’s rights document, and receive their credit reports every year; ensuring that youth in foster care are provided with personal documents when they turn 18; and, extending foster care services to youth who turn age 18 in foster care to age 21. Conditions under which adoption assistance can be continued for a youth who is adopted after age 16 is also addressed.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

This action poses no disadvantages to the public or the Commonwealth. This regulatory action proposes amendments to the Permanency regulation, which provides for the safety of children who come into the child welfare system and for children in the Commonwealth who are adopted. In particular, this action addresses recent Code changes to improve service delivery for older youth and ensures compliance with the federal Preventing Sex Trafficking and Strengthening Families Act of 2014. Compliance with federal mandates is a requirement for continuing to receive federal funding for the operation of child welfare service programs in Virginia.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this regulatory action that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation impacts LDSS. LDSS are located statewide and no individual locality will be particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action addresses the health and safety of children who have come into foster care. However, the first goal for children in foster care is reunification with their parents or prior caretaker and this regulatory action strengthens the involvement of parents in the process, including the provision of services to support the reunification of the family. The regulatory action does not directly affect family income, marital commitment, or care for elderly parents.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

No changes made.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Cleopatra Booker, Department of	Comment was made directly to the agency. It was suggested that the regulation include exceptions	Making any exemptions to the implementation of normalcy would be contrary to the federal law. The regulation does not require that all

Behavioral Health and Developmental Services (DBHDS)	regarding the implementation of normalcy for children placed in a facility or program licensed by DBHDS.	children in foster care be able to participate in all “normal” activities. Normalcy empowers caregivers to make decisions regarding child-specific appropriate participation in extracurricular, enrichment, cultural, and social activities for youth in foster care. Decisions are made using the reasonable and prudent parent standards and are based on the best interest of the child ensuring the child’s safety and well-being. Children placed in facilities or programs licensed by DBHDS are likely to have needs that would inhibit the child’s ability to participate in some “normal” activities (i.e. having a sleep over at a friend’s house). However, the caregivers in those facilities are still required to consider whether there are other age-appropriate activities in which a child might participate (i.e. recreational activities in the community.)
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All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		<p>There is no definition for “normalcy”</p> <p>There is no definition of “prior family”</p> <p>There is no definition for “reasonable and prudent parent standard”</p> <p>There is no definition for “sibling”</p>	<p>The definition of “normalcy” has been added. Implementing the reasonable and prudent parenting standard (referred to as normalcy in Virginia) is required by federal law.</p> <p>“Prior family” is used in the regulation but was not previously defined. The definition provides clarification.</p> <p>The definition of “reasonable and prudent parent standard” is necessary to provide guidance on normalcy, which is required by federal law.</p> <p>The definition of “sibling” has been added. Federal law now requires that the parent of a sibling be notified when a child enters foster care.</p>
35		LDSS shall resume custody	Language was added to clarify that if an

		upon the youth's discharge from commitment unless an alternative arrangement for the custody of the youth has been made.	alternative custody arrangement has been identified, the LDSS shall include that information in the foster care plan for review and approval by the court so that a custody order can be issued.
40		<p>There is no current requirement that addresses the parents of siblings.</p> <p>There is no current requirement to search the birth father registry.</p> <p>The child's well-being is not addressed.</p> <p>Adoptive placements are not specifically addressed.</p>	<p>The requirement that parents of siblings must be notified when a child enters foster care has been added. The intent is to exhaust all relative options for permanency for a child, as well as assist the child in maintaining connections. There is a provision for when it may not be in the child's best interest to notify relatives.</p> <p>The requirement that if the birth father of a child entering foster care is unknown, the LDSS shall search the birth father registry within 30 days of the child entering foster care. Identifying and locating the child's birth father is crucial in assisting the child in achieving permanency either through placement with the father or paternal relatives.</p> <p>Child well-being has been added to the statement that approved homes and licensed facilities shall comply with federal and state requirements for safety. Normalcy and the reasonable and prudent parent standard are not safety-related but address the child's well-being.</p> <p>"Adoptive" family placement has been added to the provision regarding delaying/denying placement, as it applies to both foster and adoptive families. "Resource" is replaced by "adoptive" in this same provision.</p>
70		<p>Age restrictions of APPLA, as a foster care goal are not addressed.</p> <p>Circumstances, including age restriction under which the goal PFC may be used, are not addressed.</p>	<p>Clarification is provided stating that the goal of APPLA can only be chosen for youth age 16 and over.</p> <p>Additions to this section outline when the goal of PFC may be identified for a youth pursuant to the Code of Virginia. This includes the child being placed in a foster home where there is a clearly established relationship with the foster parents and the youth is age 16 and older. Permanent foster care is not a permanency goal and should only be used in specific</p>

		<p>The requirement to continue to explore all permanency options for youth in APPLA and PFC is not addressed.</p> <p>The goal of Independent Living is not addressed as it pertains to Fostering Futures youth.</p>	<p>circumstances.</p> <p>The requirement that the LDSS shall continue to make efforts to help the child achieve permanency through return home, placement with relatives, or adoption even if they are in PFC or APPLA has been added. Youth in PFC and APPLA have not achieved permanency and it is crucial that the LDSS continue to explore these options throughout the life of the case. Changing circumstances of the child and family may allow for one of these goals to be achieved.</p> <p>Clarification is provided stating that the goal of Independent Living may also be used for youth in the Fostering Futures program. This program allows for youth to remain in foster care until age 21 with the goal of transitioning to adulthood. While the LDSS should continue to identify permanent connections and supports for the child, the services provided for youth in this program are aimed at assisting the child in living independently making the goal of Independent Living the most appropriate goal.</p>
80	110	<p>LDSS should consider input from the child, parents, foster/adoptive parents and service providers in the development of the foster care plan.</p>	<p>The information has been moved to section 110 as it pertains to the foster care plan prepared for all court reviews. The language has been strengthened to say that the child, parents, foster/adoptive parents, service providers should participate in the development of the plan instead of their input just being "considered." It requires that youth age 14 and older are given the opportunity to invite two members of the team. This ensures that the youth has support during the planning meeting, is heard during the meeting, and has someone advocating for him throughout the development of the permanency plan.</p>
90		<p>Normalcy is not addressed in the current regulation</p>	<p>Normalcy is a requirement of the Preventing Sex Trafficking and Strengthening Families Act of 2014. This allows foster parents and congregate care providers to make day-to-day decisions about a child's participation in age-appropriate extracurricular, enrichment and social activities. This will allow children in foster care the same</p>

			opportunities as their peers. LDSS shall ensure that training of caregivers is provided, caregivers are acting in accordance to the agreement entered into between the LDSS and provider, and that no other policy interferes with the caregiver's ability to implement normalcy.
100		<p>It is not clear that youth who turned 18 prior to July 1, 2016 are only eligible for independent living services.</p> <p>Current regulation requires the LDSS to approve the youth's living arrangement.</p> <p>Youth receiving important documents is not addressed.</p> <p>Credit checks for youth in foster care in not addressed.</p>	<p>Provides clarification that youth who turn 18 prior to July 1, 2016 are only eligible for independent living service, not Fostering Futures, which includes foster care placement.</p> <p>The requirement for the LDSS to approve the youth's living arrangement has been removed. LDSS does not have the authority to do this as these youth are considered adults and choose their own living arrangement.</p> <p>The Preventing Sex Trafficking and Strengthening Families Act of 2014 requires the LDSS to provide youth who turn 18 in foster care with certain crucial documents. This has been added to the regulation. This will enable youth to have what they need to obtain employment, attend school, and have knowledge of their medical history.</p> <p>The requirement that the LDSS shall run annual credit checks on all youth age 14 and older in an effort to guard against identity theft has been added. This is a requirement of the Preventing Sex Trafficking and Strengthening Families Act of 2014.</p>
	105	Fostering Futures is a new program.	Foster care for youth age 18-21 (Fostering Futures Program) has been added. The section outlines who is eligible for the program and the criteria that must be met to maintain eligibility. The program allows youth who would otherwise age out of foster care and be required to leave their foster home placement to remain in foster care. When youth in foster care turn 18 they are often not fully prepared to live on their own and support themselves. This program provides the much needed safety net to ensure these youth can become productive members of society.
110		LDSS should consider input from the child, parents, foster/adoptive parents and	The information has been moved from section 80 as it pertains to the foster care plan prepared for all court reviews. The

		<p>service providers in the development of the foster care plan.</p> <p>There is no current requirement that the worker address the continued appropriateness of out-of-state placements.</p> <p>Petitioning for termination of parental rights for children in foster care for the last 15 out of 22 months is not addressed.</p>	<p>language is strengthened to say that the child, parents, foster/adoptive parents, service providers should participate in the development of the plan instead of their input just being “considered.” It also requires that youth age 14 and older are given the opportunity to invite two members of the team. This ensures that the youth is supported during the meeting, is heard during the meeting, and has someone advocating for him throughout the development of the permanency plan.</p> <p>The following requirements have been added:</p> <ul style="list-style-type: none"> a. document the appropriateness of out-of- state placements in the foster care plan; b. ensure the youth attends the permanency planning hearing; and c. the youth shall be consulted regarding his permanency plan. <p>All of these are requirements of the Preventing Sex Trafficking and Strengthening Families Act of 2014. New language clarifies when a supervisory review is required vs. an administrative panel review for youth who are over 18.</p> <p>Language is added that requires if a child has been in foster care for 15 of the last 22 months, the LDSS shall petition to terminate parental rights. This is the current practice.</p>
130		<p>The foster care case closes when the foster child turns 18.</p>	<p>This has been expanded to say when the child turns 18 and objects to continuing to receive foster care services for which he is eligible, the case closes. This allows for the case to remain open for those youth that are continuing to receive independent living services or those youth in the Fostering Futures Program.</p>
140		<p>The LDSS director may grant approval for a foster child to travel out of state/country.</p>	<p>This requirement has been removed, as it contradicts federal law requiring states to implement normalcy; thereby giving foster parents and congregate care providers the authority to make day-to-day decisions about travel required to participate in normal activities.</p>
161		<p>Currently, there is only one circumstance where adoption assistance may be extended to age 21.</p>	<p>The Fostering Futures Program includes a provision where adoption assistance payments may be extended to age 21. The eligibility for this type of extension</p>

			has been added in addition to the criteria that must be met.
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