

CHAPTER 10

PUBLIC PARTICIPATION GUIDELINES

Of the Board of Juvenile Justice

~~Effective date: January 31, 1991.~~ [DRAFT Revising 2 20 2004]

Part I

General Provisions

6VAC35-10-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

~~"Agency" means any authority, instrumentality, officers of the Virginia Department of Youth and Family Services, and members of the Virginia Board of Youth and Family Services, or other unit of the state government empowered by the basic laws to make regulations or decide cases.~~

~~"Agency regulatory coordinator" means the individual appointed by the director to provide technical assistance to the operating units and to coordinate regulations.~~

~~"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make regulations or decide cases or containing procedural requirements thereof.~~

"Board" means the State Board of ~~Youth and Family Services~~ Juvenile Justice .

"Department" means the Department of ~~Youth and Family Services~~ Juvenile Justice .

~~"Director" means the Director of the Department of Youth and Family Services.~~

~~"Operating unit" means the offices of the director, deputy directors, administrators or other offices within the department that will develop or draft a regulation. Only the board may promulgate a regulation.~~

~~"Rule or regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws. Exemptions to this requirement are those listed in §9-6.14:4.1 of the Code of Virginia as determined by the Attorney General's Office.~~

6VAC35-10-20. Authority.

A. The Administrative Process Act Chapter 1.1:1 of Title 9 (Chapter 40 of Title 2.2 of the Code of Virginia) deals with the promulgation of rules and sets out the procedures for promulgating regulations. Specifically, §9-6.14:7.1 § 2.2-4007, paragraph D, directs agencies of the Commonwealth to develop , adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. Section 66-10 of the Code of Virginia empowers the Board of ~~Youth and Family Services~~ Juvenile Justice to make, adopt and promulgate rules and regulations.

B. Code of Virginia § 2.2-4007, paragraph D, specifically directs that "[t]he guidelines shall set out any methods for the identification and notification of interested parties, and

any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.”

Title 9 and Title 2.1 were recodified effective October 1, 2001, resulting in many changes. In particular, § 9-6.14:7.1 was replaced by Section 2.2-4007

C. Code of Virginia § 66-3 requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility, the Department shall comply with standards set by the Board to ensure adequate public notice and local hearing.

6VAC35-10-30. Purpose.

~~These~~ This regulation provides guidelines ~~are designed to provide consistent, written procedures that will ensure input from~~ inform the public of, and involve interested parties during in, the development, periodic review and final stages of the regulatory process amendment of regulations promulgated by the Board of Juvenile Justice, and provides guidelines for public notice and local hearing as required by 66-3.

6VAC35-10-40. Administration.

A. The board has the responsibility for promulgating regulations pertaining to public input in the regulatory process.

B. The director is the chief executive officer of the Department of ~~Youth and Family Services~~ and is responsible for implementing the standards and goals of the board.

6VAC35-10-50. Application of regulations.

A. These regulations have general application throughout the Commonwealth. Public Participation Guidelines apply to all regulations adopted, amended or repealed by the Board of Juvenile Justice, except those regulations that are exempted or excluded from the provisions of the Administrative Process Act by § 2.2-4002 or § 2.2-4006 of the Code of Virginia.

B. Nothing in these Public Participation Guidelines shall prevent the Board or the Department from taking supplemental actions to provide additional opportunity for public comment in process of drafting, revising or repealing regulations.

6VAC35-10-60. ~~Effective date.~~ [reserved]

~~Effective date: January 31, 1991.~~

The effective date of the regulation is no longer a part of the regulation itself, but is noted in the Virginia Register of Regulations when the final regulation is published.

6VAC35-10-70. Application of the Administrative Process Act.

The ~~provisions of~~ Board and the Department shall follow the policies and procedures established by the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 of Title 9 (Chapter 40 of Title 2.2 of the Code of Virginia) and applicable Executive Orders of the Governor in , shall govern the adoption, amendment,

~~modification, and revision of these regulations, and the conduct of all proceedings and appeals.~~ developing, amending or repealing regulations. All hearings on such regulations shall be conducted as public meetings in accordance with ~~§9-6.14:7.1~~ § 2.2-3707 of the Code of Virginia.

Part II

Public Participation In Rulemaking

6VAC35-10-80. Identification of interested parties.

~~Each operating unit within the~~ A. The department which is responsible for rule making shall develop and maintain a one or more current ~~list~~ lists of those persons, organizations, and agencies that have demonstrated an interest in the regulatory activities of the Department and the Board, or who have expressed interest in specific ~~program~~ regulations in the past, through written comments or attendance at public hearings regulatory issues or proposals.

B. The Department may add to the list any party likely to be interested in, regulated by, or otherwise affected by a proposed regulatory action, or any party whose involvement will serve the purpose of increasing participation in the regulatory process.

C. Individuals and organizations may ask to be added to the list of interested parties at any time., via letter, fax or e-mail. The lists will be updated as additional interested parties are identified.

D. The Department may purge inactive entries from the list of interested parties when a notice that has been sent to the postal address on file is returned as undeliverable, or

when a notice that has been sent to an e-mail or fax address on file is undeliverable for more than one day. In addition, the Department may periodically ask those on the list of interested parties to indicate whether they wish to be continued on the list.

6VAC35-10-90. Notification of interested parties.

A. Individual mailings. When ~~an operating unit~~ of the department determines that specific regulations need to be developed or substantially modified, the ~~operating unit~~ Department shall so notify ~~by mail~~ the individuals, organizations, and agencies identified as interested parties in 6VAC35-10-80. This notice may be via the U.S. mail, fax, or e-mail, and shall invite those interested in providing input to notify the agency of their interest. The notice shall include the title of the regulation to be developed or modified; the ~~operating unit~~ contact person at the Department, mailing address, telephone number; and the date by which a notice of a desire to comment must be received. In addition, known parties having interest and expertise will be advised, ~~through a special mailing via mail, fax or e-mail~~, of the agency's desire to develop a regulation and will be invited to assist the operating unit in developing the regulation or in providing input.

B. The Department shall also post notice of the intended regulatory action on the Department's web page and on the Regulatory Town Hall web page maintained by the Department of Planning and Budget, in accordance with instructions from the Governor on the regulatory process.

B. C. Notice of intent. When ~~an operating unit~~ of the department determines that specific regulations that are covered by the Administrative Process Act need to be developed or

substantially modified, the ~~operating unit~~ Department shall, consistent with policies issued by the Governor, publish a Notice of Intent in the Virginia Register of Regulations. This notice will invite those interested in providing input to notify the ~~operating unit~~ Department of their interest. The notice will include the title of the regulation to be developed or modified; the ~~operating unit~~ contact person, mailing address, e-mail address, fax number and telephone number; and the date by which a notice of a desire to comment must be received. ~~All notices shall be coordinated through the agency regulatory coordinator who will forward them for publication.~~

6VAC35-10-100. Solicitation of input from interested parties.

A. In developing any regulation, the department shall afford interested individuals and entities an opportunity to submit data, views, and arguments, whether in person, by regular mail, e-mail, or facsimile, to the department or its designated representative. Prior to or during any such opportunity the Department may, at its discretion, begin drafting the proposed regulation.

A. B. Advisory panels. ~~Whenever an operating unit proposes to develop or substantially modify a regulation, it~~ The Department may create an advisory panel to assist in ~~this~~ the development of a new regulation or the modification of an existing regulation. Advisory panels shall be established on an ad hoc basis, and shall consist of persons representative of those who have registered an interest in the subject of the regulation or persons who have an expertise in a specific regulatory matter.

1. Members of advisory panels shall consist of a balanced representation of individuals and representatives of organizations and agencies identified in 6VAC35-10-80 as interested and who have expressed a desire to comment on new or modified regulations in the developmental process. ~~Each panel shall consist of no less than three members.~~

2. Individual panels shall establish their own operating procedure, ~~but in no case will a panel meet less than twice.~~ All comments on proposed regulations shall be documented ~~by the operating unit~~ and a response developed for each comment.

~~B.~~ C. Other comments. All persons, organizations, and agencies that respond to the individual mailings, e-mail or fax notice and the Notice of Intent shall be provided an opportunity to examine regulations in their developmental stage and to provide written comments on these regulations to the ~~operating unit~~ Department. The ~~operating unit~~ Department shall document the receipt of these comments and respond to each commentor.

~~D.~~ The ~~operating unit~~ Department shall consider all input received, ~~as a result of~~ including but not limited to responses to notifications ~~mailed~~ to interested parties as listed in 6VAC35-10-90, in formulating and drafting proposed regulations.

E. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulations otherwise adopted in accordance with this chapter.

6VAC35-10-105. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in 6 VAC35-10-110 shall be mailed the following documents at the appropriate stage of the regulatory process:

1. A Notice of Intended Regulatory Action.
2. A Notice of Comment Period along with, at the Proposed Stage, a copy of the Proposed Regulation.
3. A copy of any final regulation adopted by the department.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

6VAC35-10-110. Administrative Process Act procedures.

~~After regulations have been~~ Regulations shall be developed , revised and rescinded according to these guidelines, they shall be submitted for public comment under §9-6.14:7.1- in accordance with chapter 40 of title 2.2 of the Code of Virginia. The board intends to include one or more public hearings as part of the public comment period for all regulations, and whenever practicable will schedule at least one such hearing in conjunction with a meeting of the Board so that the board members may hear first hand from persons who have an interest in the regulation.

6VAC35-10-120. Petition for rulemaking.

As provided by Code of Virginia § 2.2-4007, any person may petition the Board to develop a new regulation or to revise an existing regulation. The Board and the Department will follow the procedures set out in § 2.2-4007 in responding to any such petition.

PART III.

PUBLIC NOTICE WHEN THE DEPARTMENT ACQUIRES PROPERTY

6 VAC 35-10-130. Notice to Local Governing Authority.

When the Department acquires real property for the purpose of operating a juvenile correctional facility, it shall provide notice to the governing body of the locality in which the property is located. The Department may give such notice as soon as it has reason to believe it may acquire a specific property, but must give notice at least 30 days prior to entering into a contract to purchase or accepting a deed or other instrument of conveyance for the property.

6 VAC35-10-140. Public hearing.

The Department shall conduct a public hearing within 30 days from the date it notified the locality. If, however, the locality elects to conduct its own hearing within this same 30 days, the Department may dispense with its hearing.

6 VAC35-10-150. Comments Made at Public Hearing.

Department staff shall attend the local hearing and shall prepare a summary of the public comments made and any responses offered by the Department. The Department shall include a summary of the public comments, and its responses, in any report to the General Assembly or to the Governor and any executive branch agency which has a role in reviewing and approving the proposed development of the juvenile correctional facility on the property which was the subject of the local hearing.