3

ENTERING FOSTER CARE

TABLE OF CONTENTS

3.1 Introduction 2
3.2 Services to prevent or eliminate foster care placement 2
3.3 The date a child is considered to enter foster care 3
3.4 Best interests of child requirements 4
3.5 Reasonable efforts requirements 4
3.5.1 Initial judicial determination of reasonable efforts 4
3.5.2 Requirements for the court order 5
3.5.3 Reasonable efforts after LDSS receives custody or accepts placement 5
3.5.4 Reasonable efforts not required 5
3.5.5 When children in custody remain in their own home 6
3.6 Title IV-E funding restrictions 6
3.7 Authority for placement and dispositional alternatives 7
3.7.1 Court hearings 7
3.7.2 Temporary entrustment agreement 10
3.7.3 Permanent entrustment agreement 12
3.7.4 Relief of care and custody 12
3.7.5 Services to children through agency agreements with parents who retain custody 13
3.8 Providing written notice of right to appeal specific foster care services 18
3.9 Special populations 18
3.9.1 Pregnant and parenting youth in foster care 18
3.9.2 Indian child of a tribe 21
3.9.3 Youth in Department of Juvenile Justice custody 30
3.9.4 Youth ages 18-21 who were in foster care and completing DJJ commitment 34

3

ENTERING FOSTER CARE

3.1 Introduction

Children enter foster care through:

- Court commitment based on an abuse or neglect petition.
- A CHINS (children in need of services) petition.
- An entrustment.
- Delinquency or request for relief of care and custody petitions.
- Non-custodial foster care agreements.
- Re-entry from a commitment to the Department of Juvenile Justice.

3.2 Services to prevent or eliminate foster care placement

Foster care prevention services shall be provided to children and their families in their homes and communities to prevent or eliminate the need for foster care placements.

Any service in the home or community that is available to a child in foster care placement and his family shall be available to a child and his family as prevention services to prevent or eliminate the need for foster care placement based on an assessment of the child's and family's needs.

These services are available to children who are abused or neglected as defined in § 63.2-100 or in need of services as defined in § 16.1-228. The Children's Services Act (CSA) guidelines specify the criteria for the Family Assessment and Planning Team (FAPT), or an approved multi-disciplinary team, to use in determining when a child

meets the statutory definition of a "child in need of services" and is eligible for foster care services, consistent with the Community Policy Management Team (CPMT) policies. (See the CSA Policy Manual.)

Out-of-home placements are not considered prevention services. Short-term stays outside of the home are only considered prevention services when children temporarily leave their homes for short stays of less than 14 days for the purposes of crisis stabilization, respite, hospitalization to meet acute physical or medical needs, or short-term psychological or psychiatric evaluations.

The Code of Virginia (§§ 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, and 16.1-283) requires courts to consider persons with a legitimate interest for custody of the child when evaluating removal, entrustment, relief of custody, and termination of parental rights. In any proceeding in which a child is removed from his home, the court may order the parents or guardians of such child to provide the names and contact information to the local department of social services for all persons with a legitimate interest (§ 16.1-229.1 of the Code of Virginia).

3.3 The date a child is considered to enter foster care

Federal law and regulation provide specific criteria for calculating timelines for determining when a child is considered to have "entered foster care" for the specific purpose of ensuring that court hearings are held according to federal requirements. Virginia's court hearing requirements surpass federal requirements and as a result, ensure that the case of each child in foster care is heard more frequently than required by federal requirements, as long as the LDSS:

- Provides the court with the contact information necessary to invite the foster and adoptive parent to participate in the dispositional hearing.
- A foster care review hearing (including notice to the foster and adoptive parent of the hearing and their right to participate in the hearing) is held within 12 months of the hearing that brings the child into foster care.

By following Virginia's requirements for who shall receive notice of hearings (starting with the dispositional hearing) and adhering to the timeline for hearings, the LDSS will be in compliance with federal requirements regarding the date a child enters foster care. Federal requirements are based on:

- The date of the first judicial finding that the child has been subjected to child abuse or neglect; or
- The date that is 60 days after the date on which the child is removed from the home (Social Security Act, Title IV, § 475 (5) (F) [42 USC 675]).

For the purpose of providing services and assuming placement and care responsibility for the child, the LDSS shall consider the date of removal as the date a child enters foster care.

3.4 Best interests of child requirements

The initial court order shall contain language stating that the child was removed from the home pursuant to a judicial determination that:

- Continuation in the home would be contrary to the welfare of the child; or
- It is in the child's best interests to be placed in foster care; or
- There is no less drastic alternative than removal of the child from his or her home.

Nunc Pro Tunc (now for then) orders or affidavits attesting that the judicial determination occurred at a previous hearing that changes the substance of a prior judicial determination or constitutes a judicial determination not previously made are not acceptable documentation in support of a judicial determination for IV-E eligibility.

3.5 Reasonable efforts requirements

Both federal (Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272) and state law (§§ 16.1-251, 16.1-253, and 16.1-278) require that reasonable efforts are made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to be returned home. The safety of the child is paramount in this decision.

3.5.1 Initial judicial determination of reasonable efforts

At the time of the initial court hearing to commit a child to the custody of the LDSS, approve an entrustment agreement or approve the plan for placement in foster care through a non-custodial foster care agreement, a judicial determination shall be made as to whether reasonable efforts to prevent removal have been made. In order for the court to determine whether reasonable efforts have been made to prevent removal, the LDSS shall document and submit the following to the court:

- Service needs of the child and family including the safety of the child in the home.
- Services offered to meet the needs.
- The family's participation in service planning.
- The family's response to the services offered.

3.5.2 Requirements for the court order

The Code of Virginia requires that the initial court order state that reasonable efforts have been made to prevent or eliminate the need for removal. To meet federal requirements, reasonable efforts shall be documented in a court order within 60 days of entry into care. The court order shall also include if the child is found to be an abandoned infant as defined in § 18.2-371.1. For an entrustment or non-custodial foster care placement, reasonable efforts shall be documented within six months of placement. Compliance with Virginia law will assure compliance with federal regulations.

3.5.3 Reasonable efforts after LDSS receives custody or accepts placement

Annually, for every child in foster care, there shall be a judicial determination that reasonable efforts have been made to either:

- Safely reunite the child with his or her prior family if return home is the goal; or

- Finalize an alternate permanent placement for the child as quickly as practicable in accordance with his or her permanency plan if reunification cannot be achieved (e.g., placing the child with relatives in another state in accordance with the Interstate Compact on the Placement of Children (ICPC)) and to complete whatever steps are necessary to achieve permanency for the child either through adoption or custody transfer to relatives.

Documentation of reasonable efforts to reunify the child and family or achieve permanency for the child shall be recorded on the initial 60-day service plan, in the case record, and in every foster care review and administrative plan review thereafter.

3.5.4 Reasonable efforts not required

The LDSS having custody of the child is not required by the court to make reasonable efforts to reunite the child with a parent if the court finds that:

- The residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated;

- The parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child;

- The parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or

- Based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances (§ 16.1-283 E) or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to §16.1-283 D.

If the LDSS determines that reasonable efforts to reunify do not need to be made based on the felony convictions or circumstances listed above, the LDSS shall petition the court to make that determination. This petition may be filed at any court hearing. **Within 30 days** of the court's determination that reasonable efforts to reunify do not need to be made, the court shall hold a permanency planning hearing. If the request for such a determination is made at a permanency planning hearing, it will not be necessary to hold another hearing.

The court order shall document that reasonable efforts to reunify are not required, because the parents have been convicted of offenses listed above or had parental rights of a sibling involuntarily terminated.

The law does not require that reasonable efforts be omitted in these cases. Agencies may decide to make reasonable efforts to reunite children with parents even when a court has convicted parent(s) of the crimes listed above or the parental rights of a sibling have been involuntarily terminated. This decision should be made on a case-by-case basis.

3.5.5 When children in custody remain in their own home

In situations where custody is given to the LDSS and the child remains in the home of the parent(s) or prior custodian, a judicial determination as to reasonable efforts to prevent removal is not necessary. However, if foster care placement becomes necessary, all of the legal requirements shall be met.

3.6 Title IV-E funding restrictions

Failure to meet requirements regarding best interests and reasonable efforts will result in the child being ineligible for title IV-E funding. Additional criteria for establishing and maintaining title IV-E eligibility are explained in the VDSS Title IV-E Eligibility Manual. Placement costs for children found to be ineligible for title IV-E funding shall be paid from state pool funds.

3.7 Authority for placement and dispositional alternatives

If reasonable efforts have been made and the child still needs to be temporarily placed in foster care, the LDSS may accept placement of the child through several legal alternatives:

- Commitment by any court of competent jurisdiction; or
- Entrustment by the parent(s) or guardian(s)
    - The LDSS shall make diligent efforts to have both parents sign the entrustment agreement if the identity of both parents is reasonably ascertainable. Diligent efforts to identify and locate parents should be documented in OASIS.
    - An entrustment agreement is considered valid on the date in which the last required party has signed; or
- Placement through an agreement between the LDSS and the parent(s) or guardian(s) where legal custody remains with the parent(s) or guardian(s) (§ 63.2-900.A).

At each of the different types of court hearings concerning the child's health and safety, the court shall consider placement of the child with a relative or other interested individual as an alternative to foster care. Placements across state lines shall comply with the Interstate Compact on the Placement of Children (ICPC). Refer to the following websites for specific ICPC guidance and procedures:

- DSS public website

3.7.1 Court hearings

A child may be committed to the local board by a court order. The court order shall meet the reasonable efforts requirements in Section 3.5. The commitment shall be made before the child is 18 years old. The different types of court commitment hearings are:

3.7.1.1 Emergency removal hearing

An emergency removal order may be issued ex parte (defined as "hearings in which the court hears only one side of the controversy") by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer in situations where safety of the child precludes services to prevent removal. The judge may deem that reasonable efforts have been made.

In the emergency removal order, the court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents. The LDSS shall supervise this placement, pending the preliminary removal hearing. If the LDSS is providing supervision, a case record should be opened and maintained in OASIS.

As the initial court order, the emergency removal order shall indicate that placement is in the child's best interest (see Section 3.4) (§ 16.1-251).

3.7.1.2 Preliminary removal hearing

This is a hearing where the court determines that a child who is alleged to be abused or neglected needs to be placed in foster care.

At this hearing, the court shall find that reasonable efforts have been made to prevent removal and enter that finding on the preliminary removal order. In situations where safety of the child precludes services to prevent removal, the judge may deem that reasonable efforts have been made.

At the preliminary removal hearing, the court may make an adjudication as to whether the child was abused or neglected as defined in § 16.1-228. The LDSS, parents, or Guardian ad Litem (GAL) may request that adjudication not occur that day. The court shall then schedule an adjudication hearing to occur **within 30 days**. The results of the adjudication shall be entered on a court order.

The court will address child support at this hearing see Section 4.7.2 for additional information.

The court should consider and may transfer temporary custody to a relative or other interested individual at the preliminary removal hearing if the court finds that the relative or other interested individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive, continuous relationship with the child.
- Willing and able to protect the child from abuse and neglect.

If the court orders transfer of temporary custody to a relative or other interested individual, the order will provide for the initiation and completion of an investigation of the relative or other interested individual; and will require the LDSS to continue supervision until disposition. The order will provide for compliance with any preliminary protective order and as appropriate, ongoing provision of social services to the child and temporary custodian.

At this hearing, the court shall schedule a dispositional hearing to occur within 60 days and provide notice to those present to attend that hearing (§ 16.1-252).

3.7.1.3 Dispositional hearing

This hearing occurs within 60 days of the preliminary removal order hearing; the hearing that brought the child into care; or the date the child came into care if there was no previous hearing (see Section 3.3 for the date a child is considered to enter foster care). At this hearing, the court will enter an order (foster care plan dispositional order- dc- 553) indicating what the disposition of the case will be. The court will also review the initial foster care service plan.

On the petition submitted to the court with the service plan, the LDSS shall include the names and contact information of the foster and adoptive parent so that the court can provide them notice of this hearing. Foster and adoptive parents' attendance at this hearing is solely for the purpose of the court's review of the service plan and to provide input into this discussion. The initial part of the hearing where the facts about the case are heard and the judge enters a dispositional order are not open to the foster and adoptive parent.

The dispositional order shall include a statement as to whether reasonable efforts have been made to return the child home and that continuation in the home would be contrary to the welfare of the child, or that placement is in the best interests of the child, or that there is no less drastic alternative. If there has not been a previous order that states reasonable efforts were made to prevent or eliminate the need for removal, the final dispositional order shall include a statement to this effect.

The court should consider the transfer of legal custody of the child to the relative or other interested individual at the dispositional hearing. The order granting legal custody to the relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from the court directed investigation. The order shall state that the relative or other interested individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive and continuous relationship with the child.
- Committed to providing a permanent suitable home for the child.
- Willing and able to protect the child from abuse and neglect.

The court's order should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare, court review of the placement, and provision of ongoing services based on the needs of the child and custodian (§ 16.1-278.2).

Refer to Section 16.2.2 of this chapter for legal requirements pertaining to foster care reviews.

3.7.2 Temporary entrustment agreement

Parent(s) or guardians may voluntarily request that the LDSS take custody of the child for a temporary period. In this case, the local board may accept the child through a temporary entrustment agreement for up to 180 days. Title IV-E eligibility can extend beyond 180 days only when the court approves the temporary entrustment within 180 days of placement and determines that the best interests and reasonable efforts requirements have been met.

Conditions for use of temporary entrustment agreements are:

- To return the child home. A temporary entrustment agreement may also be used for purposes of adoption planning. It is not to be used where the goal for the child is other than return home or adoption planning.

- To specify the rights and obligations of the child, the parent(s) or guardians and the LDSS. The agreement shall include the responsibility of the parent(s) for financial support of the child and the authority of parent(s) and LDSS for medical care of the child.

- Entrustments cannot be used for educational purposes or to make the child eligible for Medicaid.

- Parent(s), prior custodians, or the LDSS may terminate the entrustment agreement within ten days with written notice. The agreement is considered to be revoked unless the LDSS opposes the request and obtains a judicial decision that return is not in the child's best interest.

There are two types of temporary entrustments, those issued for less than 90 days, and those issued for more than 90 days (§§ 63.2-903 and 16.1-277.01).

3.7.2.1 Entrustments for less than 90 days

This type of entrustment is used when a situation related to the child or his family can be resolved within 90 days. Documentation of the plan for services is required. Use of the foster care service plan form is not required. The plan may be an identifiable part of the narrative, or a separate page attached to the agreement.

If the child does not return home within 90 days, the LDSS shall petition the court for a hearing to approve the service plan and entrustment by the 89th day after placement (§ 16.1-277.01). A service plan shall accompany the petition. The service plan shall document that reasonable efforts have been made to

prevent removal and to return the child home and that continuation in the home would be contrary to the welfare of the child.

If the LDSS decides to terminate the entrustment and seek court commitment during the first 90 days, the LDSS shall petition the court for custody and submit the service plan for approval.

Federal regulations allow title IV-E eligibility for temporary entrustment cases that meet all other eligibility requirements for up to 180 days. However, if the entrustment goes beyond 90 days, procedures in Section 3.7.2.2 shall be followed (§ 16.1-277.01).

3.7.2.2 Court hearings to approve entrustments for more than 90 days

The entrustment agreement shall be approved by the court at a court hearing. The LDSS shall petition the court for approval **within 30 days** of signing the agreement and submit a service plan with the petition (§§ 63.2-903 and 16.1-277.01). The court shall set a hearing to approve the entrustment agreement and the service plan within 45 days of receiving the petition of the LDSS. The service plan submitted shall meet all requirements of Section 16 of this chapter.

There shall be a judicial determination regarding best interests (see Section 3.4) and reasonable efforts (see Section 3.5) at the hearing approving the entrustment agreement. The initial court order form (DC-553) shall state that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent removal and obtain alternative permanent placement. A statement that it is in the child's best interest to be placed in foster care or that there is no less drastic alternative than removal of the child from his or her home can substitute for the "contrary to the welfare" statement. These requirements shall be met for the child to continue to remain eligible for title IV-E beyond 180 days.

In accordance with requirements of the Code of Virginia, any court order transferring custody of an entrusted child to a relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from a court directed investigation. The order shall state that the relative or individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive and continuous relationship with the child.
- Committed to providing a permanent suitable home for the child.
- Willing and able to protect the child from abuse and neglect.

The court's order transferring custody to a relative or other interested individual will provide, if appropriate, any terms and conditions for the child's welfare, ongoing social services for the child and custodian, and court review of the child's placement (§ 16.1-277.01 D1).

Refer to Section 16.2 of this chapter for legal requirements pertaining to foster care reviews.

3.7.3 Permanent entrustment agreement

This agreement provides a method for the parent(s) to voluntarily relinquish parental rights and give the LDSS authority to place the child for adoption. The use of Permanent Entrustment Agreements is described in Section 9.4.3.1 of this chapter.

Federal regulations allow title IV-E eligibility for children who enter care through a permanent entrustment agreement only when court approval is obtained within 180 days of placement. The court shall make a judicial determination that placement is in the best interest of the child (see Section 3.4) and that reasonable efforts have been made (see Section 3.5).

Once the court approves the permanent entrustment agreement, all parental rights are terminated. The parent can no longer revoke the permanent entrustment agreement.

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court (§§ 16.1-276.3 and 16.1-93.1).

The adoption progress report shall be submitted to the court within six (6) months of the court's approval of the permanent entrustment.

3.7.4 Relief of care and custody

Parents may request temporary or permanent relief of care and custody.

On receipt of a petition for relief of custody, the court should refer requests for relief to LDSS initially for investigation and provision of services (§ 16.1-277.02). The intent of this requirement is to determine whether the provision of services will prevent placement.

At the hearing, the court will determine, based on evidence presented, including the report from the LDSS, whether the parent should be relieved of custody. If permanent relief is requested, the court will determine whether, based on clear and convincing evidence, termination of parental rights is in the child's best interests. Parental rights can be terminated only upon a finding by the court that reasonable

efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child (§ 16.1-277.02).

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court.

If relief is granted, the court will schedule a dispositional hearing within 60 days.

If permanent relief of custody is granted and termination of parental rights is ordered, the LDSS shall submit an adoption progress report to the court within six (6) months of the hearing (§§ 16.1-277.02 and 16.1-278.3).

3.7.5 Services to children through agency agreements with parents who retain custody

When a child is placed outside of the home, there are two types of agreements between a public agency and the parents or legal guardians who retain custody of the child. The type of agreement depends primarily on which public agency serves as case manager for the child placed outside of the home.

- When the LDSS serves as the case manager, the child shall be considered in foster care and a Non-Custodial Foster Care Agreement is used. (See Section 3.7.5.1)

- When another public agency, other than the LDSS, is designated by the CPMT or the court to serve as the case manager, the child shall not be in foster care and a CSA Parental Agreement is used. (See Section 3.7.5.2)

Parents or legal guardians do not have to relinquish physical or legal custody of their children to the LDSS in order to obtain necessary mental health services. Such services may be available through a CSA parental agreement and may include a full range of casework, treatment, and community services for a planned period of time. Services should be based on the assessed strengths and needs of the children and their family and documented in the service plan.

3.7.5.1 Non-Custodial Foster Care Placements

Parent(s) or guardians may enter into an agreement with the LDSS to voluntarily place a child under age 18 outside of the home in 24-hour substitute care while the parent(s) or guardians retain legal custody. The goal of such arrangement is to provide the services necessary to address the child's needs and to facilitate his or her return to the home as quickly as possible. The child is considered in foster care with the LDSS assuming placement, care and case management responsibility for the child (45 CFR 1355.20). Legal custody of the

children by the state child welfare agency (or its local counterparts) is not required in the federal definition. Thus, children placed through non-custodial agreements are in foster care.

All federal and state requirements shall be met, as with all children in foster care. The formal agreement between the parents and the LDSS is called a non-custodial foster care agreement.

Prior to entering a non-custodial foster care agreement, services to prevent the need for foster care placement shall be offered and shall be documented in the service plan. In emergency situations where services cannot be offered, the reasons shall be recorded on the service plan.

Before choosing this placement alternative and entering into a non-custodial foster care agreement, the LDSS shall assess and determine that:

- Leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk.
- The parent(s) or guardians will remain actively involved with the child during the placement.
- The child will be able to return home within a reasonable timeframe (generally within a period of 12 months or less).
- There is no less restrictive alternative available through which the child can receive the level of supervision and services required.

These determinations shall be documented on the Non-Custodial Foster Care Agreement (see Section 3.7.5.1.1). If these conditions do not exist, transferring custody to the LDSS should be considered.

3.7.5.1.1 LDSS Non-Custodial Foster Care Agreements

Non-Custodial Foster Care Agreements are between the LDSS and the parent(s) or custodians. When a non-custodial foster care agreement is executed, the permanency goal shall be reunification. The non-custodial foster care agreement shall address the conditions for care and control of the child, and the rights and obligations of the child, parent(s) or guardians, and the LDSS and include:

- A statement addressing the legal status of the child. With this agreement, the child would remain in the legal custody of the parent(s) or guardians.
- A statement that leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk.

- A statement that this is a voluntary agreement between the parent(s) or guardians and the LDSS; and that the child will be returned to the parent(s) or guardians if the agreement is revoked.

- A statement that if the parent wishes to revoke the agreement after the court approves the agreement, judicial approval for terminating the agreement shall be obtained.

- A statement that the LDSS has the right to seek judicial determination regarding custody of the child in a situation where the parent(s) or guardians revoke the agreement and the LDSS opposes return of the child.

- Requirements of the parent(s) or guardians for financial support, including a statement that the case will be referred to the Division of Child Support Enforcement (DCSE).

- Authority of the parent(s) or guardians and the LDSS in making medical care and treatment decisions.

- Expectations of the parent(s) or guardians during the placement, including a statement that the parent(s) or guardians will remain actively involved with the child during the placement.

- Expectations of the LDSS providing services to the child;

- Visitation arrangements.

- The date of the placement.

- The planned date of discharge from placement (generally within a period of 12 months or less).

- Other conditions for placement.

- When the placement is an interstate placement, a statement pertaining to responsibility for return of the child if the placement agreement is revoked.

- A non-custodial foster care agreement may extend beyond a child's 18th birthday with the consent of all parties in keeping with the child's needs and with the family and youth's cooperation to continuing services and placement.

- If both parents have custody or there is shared guardianship, both parents or both guardians shall sign the agreement.

A copy of the agreement should be given to the parent(s) or guardians, to the placement provider, and be kept in the child's record. The non-custodial agreement is effective no earlier than the date the last required signature is obtained and funding cannot begin prior to the effective date. (See the DSS internal website for a template Non-custodial Foster Care Agreement Form.)

3.7.5.1.2 Court approval of plan for placement through a non-custodial foster care agreement

The LDSS shall file a foster care plan with the Juvenile and Domestic Relations District Court within 45 days following the board or LDSS' placement of the child unless the court, for good cause, allows an extension of time, which shall not exceed an additional 60 days (§ 16.1-281 A). The LDSS should file a CHINS petition to place the case on the court's calendar and submit the foster care plan.

The court shall hold a hearing within 60 days of the child's initial foster care placement to review and approve the plan (§ 16.1-281 C).

The court order shall include statements that:

- Reasonable efforts have been made to prevent the placement.
- Continuation in the home is contrary to the child's welfare, or it is in the child's best interest to be placed in foster care, or that there is no less drastic alternative than removal of the child from his or her home.

All foster care requirements shall be met. Time frames for administrative panel reviews and hearings are based on the date of the initial non-custodial foster care placement.

Refer to Section 16.2 of this chapter for legal requirements pertaining to foster care reviews.

3.7.5.1.3 Other requirements

The case shall be entered into OASIS as a foster care case.

In the event that the child shall be moved to another placement, a new non-custodial agreement shall be signed prior to the date of the placement change. As long as there is no period during which the child returns home, a change in placement does not result in a new foster care episode. The goal should remain Return Home with the plan for reunification to be achieved within 12 months or less of the child's initial placement.

The case shall be referred for Medicaid, title IV-E screening and child support. Child support is to be addressed in the non-custodial foster care agreement. Parents are responsible for paying support from the beginning of placement (§ 63.2-909). A claim for good clause may be made when appropriate. Child support is to be based upon DCSE guidelines.

Since the child's parent(s) retain custody, they are responsible for signing the required referral and application forms.

Maintenance and service costs for non-title IV-E children will be paid from State Pool Funds.

At the point which the child no longer requires 24 hour substitute care, the child should be returned to the home and the non-custodial order should be terminated by the court. If the LDSS agrees to the return of the child and all required conditions for the child's safe return are met, the child may be sent home on a home visit pending final court approval.

If it is determined that a child in foster care through a non-custodial agreement will require a permanency goal other than reunification, the LDSS should file a petition for the child's custody to be transferred to the LDSS.

In the event that a child enters foster care from a non-custodial arrangement, as long as there is no period during which the child returns home, there is no new foster care episode.

3.7.5.2 CSA Parental Agreements

CSA Parental Agreements are agreements between a public agency other than the LDSS, designated by the CPMT, and a parent or guardian who retains legal custody of the child. CSA Parental Agreements are only used when the FAPT determines that a child requires placement outside of the home to address the child's service needs.

The public agency designated by the CPMT assumes case management responsibilities. The LDSS cannot be the case manager. If the LDSS is the case manager, the child shall be in foster care and a Non-Custodial Foster Care Agreement shall be used.

Thus, when a child is placed outside of the home through an agreement between a public agency, other than the LDSS, as designated by the CPMT, and the parent(s) or custodians retain legal custody of the child, and this other public agency provides case management services, this child is not considered in foster care and is not subject to the requirements, policies, and protocols (i.e., court hearings, title IV-E eligibility determinations, etc.) required for children in foster care.

While these children are not in foster care, they are eligible for foster care services since they have been placed under an agreement between the local public agency designated by the CPMT and the parents or custodians who retain legal custody (§ 63.2-905).

These CSA Parental Agreements, where a public agency other than the LDSS provides case management services, are subject to Final Interagency Guidelines established by the State Executive Council (SEC) of CSA. The LDSS never uses these agreements. (See the CSA User Guide, 5.3.3.1.)

The CSA guidelines specify the criteria for FAPT, or an approved multi-disciplinary team, to use in determining when a child meets the statutory definition of a "child in need of services" and is eligible for foster care services, consistent with CPMT policies. (See the CSA User Guide, 5.3.3.1.)

A CSA Parental Agreement delineates the responsibilities of both the parent(s) or custodians and the local case management agency, which cannot be the LDSS, in the provision of services. For the CSA Parental Agreement form, go to the CSA User Guide, 5.3.2.2.

The CSA interagency guidelines, checklist, FAQs, tools and additional information is available in the CSA User Guide.

3.8 Providing written notice of right to appeal specific foster care services

When the child enters foster care, the LDSS shall inform the child's birth parents or caretakers in writing of their right to appeal the denial of specific foster care services as defined in Section 15.12.1, or the delay of a decision regarding such foster care services, that are delineated in the foster care service plan and approved by the court (See Family Services Notice of Action and Right to Appeal Form). If the service is not in an approved service plan, then the denial is not appealable. The LDSS shall inform the birth parents or caretakers that the LDSS will mail the written notice at least **ten (10) days** before any action to discontinue, terminate, suspend, or change foster care services. The child's birth parents or caretakers may request a hearing within **30 days** of their receiving written notice of the denial. See Section 15.12.2 on providing written notice.

3.9 Special populations

3.9.1 Pregnant and parenting youth in foster care

Pregnant and parenting youth in foster care face additional challenges. They have to balance the circumstances of being in foster care along with being a parent. Placement changes, treatment needs and changes, and family separation can have significant impacts on a youth's health and well-being and also impact their ability to

take care of their child. Pregnant and parenting youth should be placed in the least restrictive, most family-like setting and their children should remain with them in placement, whenever possible. Service workers should explore services as early as possible to help promote the health of pregnant youth and their children through pre-natal and post-natal services and to prevent the separation of parenting youth from their children by providing parenting skills and support services. If it is necessary to assume custody of a minor child of a youth in foster care, the service worker must document all efforts to work towards placing the child with their parent in both of the foster care plans. Service workers should address the needs of both mothers and fathers who are placed in foster care, including supporting their continued contact with their child when their child's primary residence is with someone else.

Service workers must document in the child welfare information system on the child's general information screen the Pregnant/Parenting Youth in Foster Care designation.

3.9.1.1 Services for pregnant and parenting youth

Pregnant and parenting youth (mothers and fathers) in foster care are eligible for parent support services through Medicaid, CSA, independent living funds, and PSSF. These services are designed to support and strengthen the youth's parenting capacity. Parent support services can include a wide variety of services such as family counseling, parental capacity evaluations, parent-child attachment services, and more. Additionally, their minor child may be eligible for services through a prevention services case. In Virginia beginning July 1, 2021, pregnant and parenting youth are eligible for title IV-E prevention funds for evidence-based services through an in-home services case (See Prevention Guidance Section 2.3.2).

If the parenting youth and child require services, the service worker should open a prevention case in the child welfare information system. The minor child would be identified as the child in the case and the youth in foster care would be identified as the parent/caretaker. These cases will need to follow the prevention case requirements outlined in Section 2.11 of Prevention guidance including developing a prevention case plan. This prevention plan must be included with the foster care plan for the youth's foster care hearing (§ 16.1-281).

3.9.1.2 Foster care plan and documentation requirements

For all pregnant or parenting youth in foster care, their foster care plan must include (§ 16.1-281):

- A list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability, and

- A description of the foster care prevention strategy for any child born to the child in foster care.

For youth and their children who are receiving prevention services, the prevention strategy should be included in the prevention plan which is attached to the foster care plan. For youth who are not receiving prevention services, an explanation of why can be included on the child's Foster Care Plan Part A.

3.9.1.3 Minor child of youth in foster care

The minor child of a youth in foster care, who is living in a foster home or residential facility with his or her parent and who is in the custody of the parent, shall be eligible to receive a foster care maintenance payment and shall not be eligible for TANF. The foster care provider should receive a basic maintenance payment for the minor child in the amount appropriate for the age of the child and from the same funding source as the parent of the child (i.e., title IV-E or state pool funds). The minor child is not eligible for enhanced maintenance.

- The foster care provider is responsible for providing room and board and ensuring that the payment is used to meet the child's needs.
- The minor child of a foster youth remains the responsibility of his or her parent, unless custody has been removed.
- The minor child shall be listed in OASIS with the foster youth (parent).
- The minor child is eligible for Medicaid, services, and child support services

The service worker does not open a case for the minor child; all costs are paid under the foster youth's case. If the foster youth resides in a residential facility with her minor child, the rate paid will be the rate negotiated with the facility for maintenance for the minor child. If the youth, who is under the age of 18, lives in an independent living arrangement, and is receiving the Independent Living Stipend, the minor child is not eligible for a maintenance payment but may be eligible for TANF. If the foster youth lives in an independent living arrangement and is receiving a maintenance payment as a Fostering Futures participant, the minor child is also eligible for a maintenance payment and would not be eligible for TANF.

The maintenance payment should be added to the foster youth's foster care payment (as one payment). For youth who reside in supervised independent living settings under Fostering Futures, the foster care payment is sent to the youth. For all other settings, the foster care payment is made to the placement provider.

- If the minor child of a foster youth has his or her own income (i.e., SSI, SSA, or child support), these resources shall be used toward the maintenance cost.

- If the LDSS finds it necessary to assume custody of a child of a foster youth, the child of the foster youth may be eligible for title IV-E or state pool funds. Eligibility for the child of the foster youth is determined in the same manner as are all other children in foster care.

3.9.1.4 Placements specializing in providing prenatal, post-partum, or parenting supports for youth in care

Youth must always be placed in the least restrictive setting based on their needs and safety concerns Not only do family settings support healthy social development and maintenance of family connections, they help model healthy parenting and family engagement to the youth raising their child. For youth who may require a higher level of care (i.e. congregate care) based on their prenatal, post-partum or parenting needs, settings should be considered that can assist them in ensuring parental readiness or capability. Youth may be placed in congregate care programs that specialize in providing prenatal, post-partum, or parenting supports for youth. These settings are one of the specified settings allowed by Family First and do not need to meet the criteria of a Qualified Residential Treatment Program (QRTP) to receive title IV-E funding.

Currently, only placements with the Mommy & Me program designation granted by VDSS Licensing are designated to meet the specified setting for prenatal, post-partum or parenting supports for IV-E funding for residential placement; however, VDSS has the ability to designate additional placements in this placement category as more facilities are identified.

3.9.2 Indian child of a tribe

3.9.2.1 Federal definition of Indian Child

Children of Native American or Alaskan Eskimo or Aleut heritage of a federally recognized tribe are subject to the Indian Child Welfare Act (ICWA). Virginia currently has seven (7) federally recognized tribes. In January 2016, The United States Department of Interior granted federal recognition to the Virginia Pamunkey Indian Tribe. In January 2018, the following tribes were granted federal recognition: Chickahominy, Eastern Chickahominy, Monocan, Nansemond, Rappahannock, and Upper Mattaponi.

A child is covered by ICWA when the child meets the federal definition of an Indian Child. Specifically, the child is an unmarried person under the age of 18 and is either:

- A member of a federally recognized Indian tribe; or

- Eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe (25 U.S.C. § 1903).

Under federal law, individual tribes have the right to determine eligibility and/or membership. However, in order for ICWA to apply, the child shall meet one of the criteria above.

3.9.2.2 Determination of Indian status

The LDSS shall treat all children in foster care or at risk of entering foster care as an Indian child until it is determined that the child is not of American Indian or Alaskan Eskimo or Aleut heritage, and the child does not belong to a tribe located in or outside Virginia. The LDSS worker shall ask the following individuals if the child, the child's parents, or his/her grandparents are identified with or members of an Indian tribe:

- The child (if age appropriate),
- The caregiver, and
- Any other person with knowledge of the child, parent or alleged parent

This information shall be documented in OASIS using "Indian Status" as the purpose of the contact.

In the event that the LDSS determines the child, the child's parents or his/her grandparents are identified with an Indian tribe, the following steps shall be taken by the service worker to confirm the tribe's status:

- Contact the Bureau of Indian Affairs Eastern Regional Office at its website or at 615-564-6500 for guidance on ICWA notification procedures for state recognized tribes
- Review the semi-annual publication of the Tribal Leaders Directory on the website of the U. S. Department of the Interior Bureau of Indian Affairs. The directory provides the name, address, and contact information for each of the federally recognized Indian tribes. In the back, the directory has a copy of the Federal Register listing the "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs." To see if there is a later version of this listing, go to Federal Register, click on" browse," and search for "Indian Entities Recognized."

If the tribe is a federally recognized tribe, the worker shall:

- Gather the following information, if available, from the child, parent, alleged parent, relative, and any other person with knowledge of the child's or parent's tribal affiliation:
    - The name of the tribe of which the child, parent, or alleged parent is a member or eligible for membership.
    - The tribal enrollment or identification numbers of the parents or alleged parents and child(ren).
    - Name of the following relatives of the child:
        - Birth mother's maiden name.
        - Maternal and paternal grandparents.
        - Alleged biological and/or legal father(s).
    - Birth dates and birthplaces of the child, parents, and alleged parent.
    - Social Security numbers for the child, parents, and alleged parent.
    - If either birth parent was adopted, obtain the name of his or her birth parents (if available).
    - Other information about extended family members including the names, clan affiliations, dates of birth, and addresses of grandparents, aunts, uncles, cousins, great grandparents, stepparents, first and second cousins.
- Identify the geographic location, the Bureau of Indian Affairs Regional Office of the tribe, and contact information of the Indian Child Welfare Designated Agent for the tribe.
- Contact the Child Welfare Designated Agent and request contact information including the name, address, and telephone number of the tribal social service program and/or ICWA representative of the tribe.
    - Newly recognized tribes may not have a Child Welfare Designated Agent and/or ICWA representative. In these circumstances, the service worker is required to contact the head of the tribe. Notification to the tribe needs to be completed in writing via certified mail. If initial contact is by phone, the service worker is still required to send written notification to the head of the tribe or the designated representative via certified mail.
- Contact the tribal social service and/or ICWA representative and request in writing that the tribe confirm the child's membership or eligibility for

membership as the biological child of a member of the tribe. The service worker shall provide the social service and/or ICWA representative with all the identifying information listed above to assist in the confirmation or determination of membership.

- Document clearly in OASIS (using "Indian Status" as the purpose of the contact) and the foster care paper case record the determination that the child is an Indian child, as confirmed by the tribe. The tribe believed to be the child's tribe is the only entity that can make a determination of whether a child is an Indian child or not. A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria.

- Document in the case record all inquiries and contacts made to investigate whether or not a child is an Indian child. The case record should include copies of all written correspondence to the tribe and correspondence from the tribe. Additionally, copies of the certified mail return receipts for the written notification should be included in the case record.

- Inquire of the tribal social service and/or ICWA representative if the tribe is willing to assume custodial responsibility for the child, once tribal membership in a federally recognized tribe is confirmed.

- Inquire of the tribe of any potential placement resources in accordance with Section 3.9.2.7.1.

3.9.2.3 Requirements for active efforts

ICWA requires that active efforts shall be made to maintain and reunite an Indian child with his/her family or tribal community.

Active efforts are more than reasonable efforts as required by title IV-E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts are also separate and distinct from requirements of the Adoption and Safe Families Act (ASFA), 42 U.S.C. 1305. ASFA's exceptions to reunification efforts do not apply to ICWA proceedings. Refer to 42 U.S.C. 1305 for a list of those exceptions.

Examples of active efforts include, but are not limited to:

- Engaging the Indian child, his/her parents, extended family members, and custodian(s);

- Taking necessary steps to keep siblings together;

- Identifying appropriate services and helping the parents overcome barriers, including actively assisting them in obtaining such services;

- Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in Family Partnership Meetings (FPM) (see Section 2.9);

- Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;

- Involving and using available resources of the extended family, the child's Indian tribe, Indian social service agencies and individual caregivers.

3.9.2.4 When ICWA is not applicable

A child of Indian heritage who is officially determined to be neither a member nor eligible for membership in a federally recognized tribe is not subject to the requirements of the ICWA. The service worker shall document in the case record, the steps taken to determine the child's Indian/tribal ancestry and the tribe's written statement declaring the child ineligible for membership. Document any phone calls from the tribe stating that the child is not eligible and incorporate into any court hearing the tribe's written statement or documented phone call that the child is ineligible for tribal membership.

A child belonging to a Virginia tribe, that is not federally recognized, is not subject to the Indian Child Welfare Act, and the local court has jurisdiction. When a child entering care is believed or known to have Virginia Indian heritage, the LDSS shall immediately contact the Bureau of Indian Affairs Eastern Regional Office at its website or call 615-564-6500 for guidance on ICWA notification procedures for state recognized tribes.

In instances where ICWA does not apply but the child is of Indian heritage, a member of a Virginia tribe that is not federally recognized, or considered Indian by the Indian community, the LDSS should consider tribal culture and connections in the placement and care of the child.

In addition to following all ICWA requirements, LDSS are strongly encouraged to contact Virginia tribes in their service areas and work to build and strengthen relationships and address the needs of Indian children. The contact list for Virginia Tribes can be found here.

3.9.2.5 Transfer of an Indian child to a tribal agency

When it is determined that the child is a member of a federally recognized tribe, the LDSS shall work in consultation with either parent, the Indian custodian, or the tribe on transfer procedures. The tribe's right to request a transfer to a tribal court can occur at any court proceeding, however, good cause may exist for the transfer not to occur. For example, a tribe may decide that a transfer is not appropriate until the termination of parental rights is being determined. Procedures for transferring a child to a tribe will be situational depending on the age of the child and requirements or needs of the tribe.

The transfer procedures shall not impact the child's eligibility, receipt of services, or payment under title IV-E or the medical assistance program operated under title XIX (Medicaid).

The LDSS shall establish eligibility for title IV-E at the time of transfer, if an eligibility determination is not already completed.

The LDSS shall provide essential documents and information necessary to continue the child's eligibility under title IV-E and Medicaid program under title XIX to the tribal title IV-E agency or an Indian Tribe with a title IV-E agreement, including but not limited to the following:

- All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Social Security Act have been made.
- Other documentation that the State agency has that relates to the child's title IV-E eligibility under §§ Sections 472 and 473 of the Social Security Act.
- Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits.
- Copy of the case plan developed including health and education records of the child.
- Documentation of the child's placement settings, including written documentation of the approval status of the current placement.
- Any other available information the tribe may request including but not limited to:
    - Identifying information on the child, parents, and relatives.
    - Special needs the Indian child may have.
    - Resources utilized or needed to meet the needs of the child.
    - The identified CPS risks and safety factors that caused the necessary removal.
    - Any assessments on the child and/or parents identifying strengths and needs.
    - Information about any relative or other significant person who is willing and able to care for the child.

- Copies of OASIS or paper case records

The service worker shall coordinate with the tribal court and/or an ICWA representative regarding the transfer of the child to the tribal agency:

- Obtain the parent's, guardian's, caregiver's or Indian custodian's (if available) agreement with the child's transfer to the tribe (if the parent objects to transfer to the tribe, contact the local attorney's office).

- Obtain the date, time and name of the tribal representative who will take physical custody of the child.

- When the tribe takes physical custody of the child, the acceptance and transfer of custody should be documented by written verification of the tribal representative's authority and acceptance of custody should be obtained and filed in the case file.

- Provide notice to the court that the tribe is assuming the child's custody so the court can determine appropriate action on the court's case.

3.9.2.6 Membership or eligibilty in more than one tribe

If an Indian child is a member or eligible for membership in more than one federally recognized tribe, the LDSS shall notify and work in collaboration with all tribes of which the child may be a member or eligible for membership. The notification provided to each tribe should specify the other tribe or tribes of which the child has membership or is eligible for membership. ICWA requires that the Indian tribe with which the child has more significant contacts shall be designated as the child's tribe.

To determine significant contacts, the LDSS should gather the following information from the child, the child's parent, alleged parent, relative, and any other person with knowledge of the child's or parent's tribal affiliation:

- Preference of the parents for membership of the child;

- Length of time at residence on or near the reservation of each tribe;

- Tribal membership of custodial parents or Indian custodian; and,

- Interest of each tribe in response to the notice that the child is involved in a child custody proceeding;

If an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, consideration should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes.

If the Indian child is not a member of any tribe, the LDSS should provide an opportunity for the tribes to work together to determine which of them should be the designated tribe. If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

- The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or,
- Tribal membership of custodial parent or Indian custodian; and/or,
- If applicable, length of time the child resided on or near the reservation of each tribe; and/or,
- Whether there has been previous court involvement with respect to the child by a court or one of the tribes; and/or,
- Self-identification by the child; and/or,
- Availability of placements.

In the event the child is eligible for membership in a tribe but is not yet a member, the LDSS should take the steps necessary to obtain membership for the child in his/her designated tribe. Once an Indian tribe is designated as the child's Indian tribe, the LDSS shall notify all involved tribes in writing of the determination.

3.9.2.7 Non transfer of an Indian child to a tribal agency

Upon request to transfer the child to a tribal agency, the court shall transfer the case unless good cause exists to deny the transfer due to any of the following reasons:

- Either parent objects;
- The tribal court declines;
- The court determines that good cause exists not to transfer.

The burden of establishing good cause not to transfer is on the party opposing the transfer. The reasons for such belief or assertion must be recorded in OASIS, in the paper case records, and made available to the party petitioning for transfer.

If the tribe indicates that it will not assume custodial responsibility for the child, the service worker shall:

- Provide reunification services to the family of an Indian child when the child is in out of home placement. The first priority is to facilitate family reunification as soon as possible.

- Involve parents, other family members, and to the greatest extent possible, the Indian child's tribe in developing a case plan aimed at enabling the family to care for the Indian child safely at home and a concurrent plan should a return home not be possible. If it appears that the Indian child will not be reunited within 12 months, the service worker in collaboration with the Indian child's tribe, will implement the concurrent plan aimed at placement with the identified permanent placement for the child. The service worker shall strongly and regularly encourage the tribe to assist in the early identification of an appropriate permanent placement for the child and will place the child with the tribe's identified resource, unless there is a safety risk with the placement resource.

- Make active efforts to ensure that the Indian child's tribe and/or parent's tribe participate in the development of the foster care plan. The tribe's participation may be in person, by telephone or another effective means of communication.

- Contact the tribal social services and or ICWA representative and ask assistance from the tribe with the identification and provision of culturally appropriate services and programs that may be available through the tribe or an American Indian cultural center in the area or in close proximity that may assist the child or parents.

- Ensure that services and programs are culturally competent and delivered in a manner that incorporates, when appropriate, American Indian ceremonial and religious practices, family team decision making, talking circles, and programs that provide services specifically designed for Indian children and families that reflect American Indian values and beliefs in the family.

3.9.2.7.1 Indian child placement and placement preferences

The ICWA sets forth standards that govern where Indian children accepted for foster care or adoption may be placed. These standards are as follows:

- The Indian child shall be placed in the least restrictive setting which most approximates a family in which his special needs, if any, may be met.

- The Indian child shall be placed within reasonable proximity of his home taking into consideration any special needs of the child.

- In any foster care placement, a preference shall be given to a placement with:
    - A member of the Indian child's extended family;
    - A foster home, licensed and approved or specified by the Indian tribe;
    - An Indian foster home licensed or approved by an authorized non-Indian licensing authority; OR
    - An institution for children approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child's needs.

In the event that any party claims good cause exists to not follow the placement preference, the reasons for such belief or assertion must be recorded in OASIS, in the paper case records, and made available to the party involved in the proceeding and the Indian child's tribe. Establishing good cause not to follow placement preference shall be clear and convincing and the burden of the party seeking departure from placement preference.

A determination of good cause shall be based on one or more of the following considerations:

- The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.
- The request of the child, if the child is able to understand and comprehend the decision that is being made.
- The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness;
- The unavailability of a placement after providing clear and convincing evidence by the LDSS as stated above and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located.

3.9.3 Youth in Department of Juvenile Justice custody

In August 2015, VDSS and the Virginia Department of Juvenile Justice (DJJ) developed and enacted a Memorandum of Agreement (MOA). The purpose of the MOA is to clearly identify the roles and responsibilities and provide instruction and guidance for both parties to serve the best interests of foster care youth committed

to DJJ. The MOA specifically addresses those youth who were in the custody of the LDSS immediately prior to commitment and who have not attained the age of 21 upon their release. The MOA has been expanded to age 21 to include the Fostering Futures population. These procedures require coordination and cooperation between DJJ and LDSS staff prior to, during and following the youth's commitment. These procedures are in compliance with §§ 16.1-291, 16.1-293, and 16.1-294 and should be considered best practice for the case supervision and management by the LDSS. The DSS-DJJ MOA, joint guidance, and instructions for entering the case in OASIS can be found here.

3.9.3.1 Procedures immediately following commitment

At the time a youth in the custody of the LDSS is committed to DJJ, the youth becomes a mandated population under foster care prevention for funding purposes. The juvenile and domestic relations Court Service Unit (CSU) shall maintain contact with the youth during commitment along with the LDSS.

Within **five (5) business days** after the youth's commitment or after becoming aware of the commitment, the LDSS, DJJ, the Guardian Ad Litem (GAL) and any other parties of the youth's dispositional hearing should identify potential dates and times to hold the FPM.

A youth committed to DJJ is no longer in the custody of the LDSS and shall be discharged from foster care on the date of the court order. The case-type should be changed to "former foster care-committed to DJJ". Although the youth is no longer in LDSS custody, the LDSS service worker shall maintain contact with the youth and DJJ during the commitment time period when it is anticipated that the youth will return to LDSS custody at the end of the DJJ commitment. DJJ and LDSS should request that the court include in the Commitment order a provision that custody is transferred back to the LDSS upon the youth's release from commitment.

3.9.3.2 Procedures during commitment

The LDSS service worker and the CSU parole officer should work in collaboration to attend the case-staffing meeting and to notify the other of any staff changes in the CSU parole officer, LDSS service worker, or assigned counselor/case manager within **forty-eight (48) hours** of the change. LDSS shall be responsible for the following procedures while a youth is committed to DJJ:

- Maintain monthly contact with the youth. Face to face, in-person contacts at the juvenile correction center or other direct care placement facility shall occur every other month. For the alternating months, the visit may be conducted using the CSU's video conferencing technology.

- Participate in and provide input for Individualized Education Program (IEP) meetings and encourage and assist parents or other designated persons to attend.

- Forward any information from DJJ to the parent, other designated person as the educational decision maker, or person approved to receive information directly from DJJ.

- Coordinate a FPM:

    - No later than **five (5) business days** after the youth's commitment or after becoming aware of the commitment.

    - Six (6) months prior to the youth's anticipated release date.

    - Ninety (90) days prior to the youth's anticipated release date.

- File a Petition for Foster Care Review Hearing or Petition for Permanency Planning Hearing, as well as a foster care plan, 30 days prior to the juvenile's anticipated release date.

For suggested topics to be addressed at each occurrence of the FPM, refer to section 5.53 of the MOA.

Costs associated with the family's travel to a FPM may be reimbursed through CSA.

3.9.3.3 Procedures post release

Post-release supervision is the period that begins after a youth who has been committed to the DJJ returns to a local community for supervision. Post-release supervision or parole supervision of a youth is the responsibility of DJJ and not the LDSS.

The LDSS service worker should be responsible for the following upon the youth's release from DJJ:

- Transporting the youth to CSU to meet with the parole officer and review the rules of parole.

- Re-enrolling in school if applicable.

- Monitoring the youth's placement.

- Working on the youth's permanency goal.

- Reporting any non-compliance in writing with treatment and services to DJJ as soon as possible but no later than **forty-eight (48) hours** after receiving information.

3.9.3.4 The youth's custody upon release from commitment

In the event that the youth was in the custody of the LDSS immediately prior to his commitment to DJJ and has not attained the age of 18 years, the LDSS shall resume custody upon the youth's release. DJJ will consult with LDSS at least 90 days prior to the youth's release from commitment on parole supervision concerning return of the youth to the custody of the LDSS and the placement of the youth (§ 16.1-293).

Pre-release planning for the youth is integral to determining the best placement resource and service needs for the youth and should involve discussions with family, relatives, and the DJJ regarding the best alternatives for the youth. The LDSS is responsible for continuing to address barriers to achieving permanency throughout the youth's commitment. The LDSS is also responsible for considering and pursuing the feasibility of a safe placement with family members upon the youth's release as a step towards achieving timely permanency for the youth.

Code of Virginia (§ 16.1-293) states that an alternative arrangement for the custody of the youth may be developed during the release planning process. When the LDSS determines that there is an appropriate alternative arrangement for custody available, the LDSS should ensure that this possibility is addressed at a FPM as soon as possible after notification of the youth's release date. Additionally, the possibility for the youth to be released from commitment to a trial home visit should be addressed in a FPM during the release planning process.

After determination is made regarding the most appropriate placement for the youth, a transition plan should be developed with input from DJJ, the youth's parents, the youth, and the person who may take custody of the child.

A Petition for Foster Care Review Hearing or Petition for Permanency Planning Hearing should be filed 30 days prior to the juvenile's anticipated release date in order to bring the matter before the Court to address the youth's custody as close to the release date as possible. The foster care plan which is filed with the petition should identify the most appropriate foster care goal. In the event that a custody transfer is recommended by the LDSS, at the hearing, the Judge will make a determination about the youth's custody and may issue an order transferring custody to an appropriate alternative custodian at that time.

When the youth returns to LDSS custody upon release from commitment, this is considered a second foster care episode. The LDSS must change the case type from "former foster care-committed to DJJ" to "foster care" and new entries

must be made on the physical removal, legal basis, and placement screens. To resume the court timeline, the agency must file a Petition for Foster Care Review Hearing or Petition for Permanency Planning Hearing 30 days prior to the juvenile's anticipated release date. The court hearing must take place as close to the release date as possible and subsequent court hearings will follow the youth's prior court timeline.

3.9.3.5 Children returned to the LDSS custody and placed in out-of-home placement

- The youth is eligible for foster care maintenance and services. These cases are subject to requirements governing foster care plans, supervisory or panel reviews and dispositional hearings.

- The service worker shall refer the youth and provide information on the Title IV-E/Medicaid Eligibility Form to the eligibility worker. The eligibility worker shall determine the youth is not eligible for title IV-E Foster Care and determine whether the youth is eligible for Medicaid.

3.9.4 Youth ages 18-21 who were in foster care and completing DJJ commitment

Please refer to section 14 of the foster care chapter.