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ENTERING FOSTER CARE

TABLE OF CONTENTS

3.1	Introduction	3
3.2	<i>Services to prevent or eliminate foster care placement</i>	3
3.3	The date a child is considered to enter foster care.....	4
3.4	Best interests of child requirements.....	4
3.5	Reasonable efforts requirements.....	5
3.5.1	Initial judicial determination of reasonable efforts	5
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	6
3.5.5	When children in custody remain in their own home.....	7
3.6	Title IV-E funding restrictions.....	7
3.7	Authority for placement and dispositional alternatives.....	7
3.7.1	Court hearings.....	8
3.7.1.1	Emergency removal hearing.....	8
3.7.1.2	Preliminary removal hearing.....	8
3.7.1.3	Dispositional hearing.....	9
3.7.2	Temporary entrustment agreement	10
3.7.2.1	Entrustments for less than 90 days	11
3.7.2.2	Court hearings to approve entrustments for more than 90 days	12
3.7.3	Permanent entrustment agreement.....	12
3.7.4	Relief of care and custody.....	13
3.7.5	Services to children through agency agreements with parents who retain custody.....	14
3.7.5.1	Non-Custodial Foster Care Placements	14
3.7.5.1.1	LDSS Non-Custodial Foster Care Agreements.....	15

3.7.5.1.2	Court approval of plan for placement through a non-custodial foster care agreement	16
3.7.5.1.3	Other requirements	17
3.7.5.2	CSA Parental Agreements.....	18
3.8	<i>Providing written notice of right to appeal specific foster care services</i>	19
3.9	Special populations.....	19
3.9.1	The minor child of a foster youth	19
3.9.1.1	Paying maintenance for minor child of foster youth.....	20
3.9.2	Indian child of a tribe	20
3.9.2.1	<i>Federal definition of Indian Child</i>	20
3.9.2.2	<i>Determination of Indian status</i>	21
3.9.2.3	<i>Transfer of an Indian child to a tribal agency.....</i>	22
3.9.2.4	<i>Non transfer of an Indian child to a tribal agency</i>	24
3.9.2.4.1	<i>Indian child placement and placement preferences.....</i>	25
3.9.2.5	<i>When ICWA is not applicable</i>	25
3.9.3	Youth in DJJ custody.....	26
3.9.3.1	Youth committed to Department of Juvenile Justice.....	26
3.9.3.2	Post-release supervision.....	26
3.9.3.3	Alternative arrangement for custody upon release	27
3.9.3.4	Children returned to the LDSS <i>custody</i> and placed in out-of-home placement.....	27
3.9.3.5	OASIS requirements	27
3.9.3.6	Submission of the Foster Care Service Plan to court.....	28
3.9.4	<i>Youth ages 18-21 who were in foster care and completing DJJ commitment</i>	29
3.9.4.1	<i>Eligibility</i>	29
3.9.4.2	<i>Application.....</i>	30

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 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 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.

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, adoptive, or resource parent to participate in the dispositional hearing.
- A foster care review hearing (including notice to the foster, adoptive or resource 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 or, for an entrustment or non-custodial foster care placement, 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, resource or adoptive parent so that the court can provide them notice of this hearing. Foster,

resource, or 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, resource, or 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 15.2](#) 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 14](#) 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 15.2](#) 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 9.5.3.1](#) 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 must 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 15.2](#) 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 must be moved to another placement, a new non-custodial agreement must 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 Policy Manual](#), Appendix D.)

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 Policy Manual](#), Appendix D.)

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 Policy Manual](#), Appendix D.

The CSA interagency guidelines, checklist, FAQs, tools and additional information is available in the [CSA Policy Manual](#), Appendix D for the VDSS.

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 14.12.1](#), 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. 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 14.12.2](#) on providing written notice.*

3.9 Special populations

3.9.1 The minor child of a foster youth

- The foster care provider is responsible for providing room and board and ensuring that the payment is used to meet the child’s needs. (Refer to [Section 3.9.1.1](#) for payment information.)
- 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 not subject to requirements for plans, reviews, or hearings. However, the needs and safety of the minor child should be considered and documented when developing the service plan for the (foster youth) parent.
- The minor child is eligible for Medicaid, services, and child support services.

3.9.1.1 Paying maintenance for minor child of foster youth

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 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 service worker does not open a case for the minor child; all costs are paid under the foster youth's case. The maintenance payment should be added to the foster youth's foster care payment. 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 foster youth lives in an independent living arrangement, the minor child may be eligible for TANF.

- 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.

3.9.2 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). While there are no federally recognized tribes in Virginia, members of federally recognized tribes do reside in Virginia.

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 must meet one of the criteria above.

3.9.2.2 Determination of Indian status

If the LDSS suspects or knows that a child in foster care or one about to be placed in foster care is of American Indian or Alaskan Eskimo or Aleut heritage, and the child belongs to a tribe located outside Virginia, the service worker shall:

- *Confirm the tribe's status as a federally recognized tribe. The service worker should 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, 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.

- *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.*

- *Degree of Indian Blood and/or Certificate of Degree of Indian Blood (CDIB) of the child, parents, alleged parent, and grandparents (this information is to be provided to the child's Indian tribe and is not to be considered for purposes of exclusion of the child from coverage under ICWA).*
- *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.*
- *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.*
- *Contact the tribal social service and/or ICWA representative and request 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. 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 clearly in OASIS and the foster care paper case record the determination that the child is an Indian child, as confirmed by the tribe. It is extremely important to 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.*
- *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.*

3.9.2.3 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 the tribe on transfer procedures. 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 social service and/or ICWA representative 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.*

3.9.2.4 Non transfer of an Indian child to a tribal agency

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.*
- *The service worker shall 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 diligent efforts to ensure that the Indian child's tribe and/or parent's tribe participate in the development of the case 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.*
- *The service worker should ensure that services and programs should be 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.*

3.9.2.4.1 Indian child placement and placement preferences

The Indian child welfare act 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 must 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 must 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.*

3.9.2.5 When ICWA is not applicable

An Indian child who is officially determined by the tribe to not be a member or eligible for membership in a federal tribe is not subject to the requirements of the Indian Child Welfare Act. 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 tribe membership.

Because Virginia has no federally recognized tribes, a child belonging to a Virginia tribe is not subject to the Indian Child Welfare Act, and the local court has jurisdiction. However, 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 Franklin Keel at 615-564-6500 for guidance on ICWA notification procedures for state recognized tribes.

In instances where ICWA does not apply, but the child is biologically Indian or considered Indian by the Indian community, the LDSS should consider tribal culture and connections in the placement and care of the child.

3.9.3 Youth in DJJ custody

The purpose of this section is to identify procedures for the LDSS in order to provide services for foster care youth committed to the Department of Juvenile Justice (DJJ). These procedures will require coordination and cooperation between DJJ and LDSS staff. These procedures chronologically outline the responsibilities of a LDSS once a foster care youth is committed to DJJ. These procedures are in compliance with §§ [16.1-291](#), [16.1-293](#), and [16.1-294](#).

3.9.3.1 Youth committed to Department of Juvenile Justice

At the time a youth in custody of the LDSS is committed to DJJ, the juvenile and domestic relations court service unit shall maintain contact with the youth during commitment along with the LDSS.

A youth committed to DJJ is no longer in the custody of the LDSS and shall be discharged from foster care. The date of the court order will be the discharge date as documented in OASIS.

Although the youth is no longer in DSS 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. *Information on recording these contacts is in the OASIS help section entitled Record a child's commitment to corrections.*

3.9.3.2 Post-release supervision

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.

3.9.3.3 Alternative arrangement for custody upon release

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, unless an alternative arrangement for the youth's custody has been made and communicated in writing to DJJ. DJJ will consult with LDSS *90 days prior* to the youth's release from commitment on parole supervision concerning return of the youth to the locality and the placement of the youth ([§ 16.1-293](#)).

When the LDSS determines that there is an appropriate alternative arrangement for custody available, the DSS should hold a Family Partnership Meeting within 2 weeks of the notification of the youth's release. A transition plan must be developed with input from DJJ, the youth's parents, the youth, and the person who may take custody of the child.

A petition must be filed in order to bring the matter before the court to address the child's custody upon release. The potential alternative custodian should file a petition for custody in order to bring the matter before the court of competent jurisdiction. The LDSS must work as closely with the court as possible so the custody hearing may be held prior to the youth's release from DJJ. An order transferring custody to an appropriate alternative custodian can be issued by the court on the date of the release.

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

- The case shall be opened in OASIS to foster care (see [Section 3.9.3.4](#)).
- The youth is eligible for foster care maintenance and services. These cases are subject to requirements governing service 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.

3.9.3.5 OASIS requirements

When a youth returns to LDSS custody from a DJJ commitment, the youth must be re-opened to foster care. The day the child is returned to LDSS custody is the date of the new foster care episode. If the youth was part of a foster care case in OASIS that remained open because siblings were still in foster care, the

client's information should be updated. If the youth's OASIS foster care case was closed when he was committed to DJJ, that case should be re-opened.

- If the case is still open, delete the end date on the Client General Information screen to reactivate the youth.
- If the case is closed, reopen the case:
 - Select "Reopen" on the Summary screen.
 - Enter "Foster Care" as the case type with the begin date as the date the youth returned to LDSS responsibility.
 - Delete the end date on the Client General Information screen to reactivate the youth.
 - Delete the end date on any other client who will be active in the case.

The service worker shall then enter required information into the Physical Removal Screen and Legal Basis for Custody Screen in OASIS as follows:

Physical Removal Screen:

Date Child Removed from Home:	Date left DJJ returned to DSS custody
Child Removed From:	Legal Guardian
Type of Removal:	Court Ordered
Caretaker Family Structure:	Unable to Determine
Conditions:	Child's Behavior Problem

Legal Basis for Custody Screen:

Begin Date:	Date left DJJ returned to DSS custody
Official Custody:	Court Ordered
Custody Disposition:	DSS Custody
Legal Basis for Custody:	Needs Services

3.9.3.6 Submission of the Foster Care Service Plan to court

When a youth is returned to foster care from DJJ, the LDSS should file a petition to schedule a foster care review hearing. The date a child is returned from DJJ to LDSS custody, is considered to be the date the child entered foster care. The LDSS shall submit a service plan on the youth to the court no later than 45 days from the date that the child is considered to have entered foster care.

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

The purpose of this section is to identify procedures for the LDSS to provide services for former foster care youth committed to the Department of Juvenile Justice (DJJ) and completing their commitment to DJJ between the ages of 18 and 21 years.

LDSS and licensed child placing agencies shall provide independent living services to any youth between 18 and 21 years of age who was in the custody of the LDSS immediately prior to his commitment to the Department of Juvenile Justice and is in the process of transitioning from a commitment to DJJ to self-sufficiency and meets eligibility requirements.

These former foster care youth are eligible to resume independent living services under ([Section 13.17](#)).

LDSS and DJJ staff shall work cooperatively through the duration of the youth's commitment to ensure communication of information regarding the youth's status and to facilitate transition planning for the youth prior to his release. At least 90 days prior to the youth's release from commitment on parole supervision, DJJ staff shall inform the youth of his/her ability to apply for the resumption of independent living services and shall consult with the LDSS concerning the youth's return to the locality and living arrangements for the youth.

Should the youth choose to apply for the resumption of independent living services, the LDSS and DJJ staff shall work collaboratively to develop a plan for the successful transition of the youth from DJJ to independent living, which shall identify the services necessary to facilitate the youth's transition to independent living and describe how the necessary services shall be provided. ([§ 16.1-293](#)).

The application ([Section 3.9.4.2](#)) and assessment ([Section 13.17.3](#)) should be completed prior to the youth's release from DJJ. However, the youth may complete the application and assessment for up to 60 days following his/her release. Services identified in the plan begin after the youth's release from DJJ. See ([Section 13.17](#)) for additional information.

3.9.4.1 Eligibility

A former foster care youth is eligible to request independent living services if the young adult meets all of the following:

- Is between the ages of 18 and 21 but has not yet reached his 21st birthday.*
- Is a resident of Virginia.*
- Was in the custody and care of LDSS in Virginia immediately prior to his commitment to DJJ.*

- *Is in the process of transitioning from his DJJ commitment to self-sufficiency.*
- *Completes an initial application requesting independent living services.*
- *Enters a written agreement for the provision of IL services with the LDSS or licensed child placing agency specifying the responsibilities of the youth, the LDSS, DJJ, and other providers, as appropriate, within 60 days of his release from commitment to DJJ.*
- *Is not on active military duty.*

3.9.4.2 Application

The former foster youth who is interested in independent living services shall apply directly to the LDSS that held custody of the youth prior to his DJJ commitment. The [Application to Resume Independent Living Services](#) shall be completed and signed by the youth and a representative of the LDSS. It will serve as the temporary written agreement. The completion of the initial application will be verification that the youth requested a resumption of services within 60 days of his release from DJJ commitment. If the youth completes the application with the LCPA with which he had been placed, it is the LCPA's responsibility to contact the LDSS that had custody of the youth and submit the youth's application to the LDSS.

Acceptance of the initial application requesting services is based on the willingness of the youth to enter into an agreement that documents service needs and expectations of the youth, LDSS or LCPA, DJJ and other parties providing services to the youth. The representative of the LDSS or LCPA shall ensure the youth has provided all necessary information on the initial application. The representative should not sign the application requesting services until it has been reviewed with the youth.

*The request for services will be denied if the youth does not meet eligibility requirements as outlined in [Section 3.9.4.1](#), the youth refuses to complete all application items, or the youth refuses to meet with the team to complete the agreement. It is the responsibility of the assigned worker to review the application, confirm the date, time, and location of the team meeting with the youth, and provide any assistance necessary to facilitate completion of the application and attendance at the team meeting. The youth's application should be reviewed and a team meeting scheduled **within ten (10) business days** upon receipt of the initial application.*