



# ***“Normalcy” for children in foster care***

*May 2016 Vermont Juvenile Court Improvement Program (CIP)*

## **NORMALCY: Allowing foster children a more normal daily upbringing.**

This InfoBulletin provides an overview of the “normalcy” provisions of federal law P.L. 113-183.

### ***Let kids be kids***

The federal Preventing Sex Trafficking and Strengthening Families Act<sup>1</sup> (hereinafter the “Act”) went into effect in October 2015. There are many provisions of the law that judges, attorneys, and other professionals in juvenile court cases will need to become familiar with. This bulletin focuses on one provision: the concept of “normalcy” for children in foster care. “Normalcy” can be generally described as “the idea that youth in care should have the same experiences and opportunities as their peers who are not in the system.”<sup>2</sup>

Many foster children over the years have been excluded from the types of daily social and educational activities that most children take for granted, because it was too difficult to obtain child welfare agency (legal custodian) consent prior to an activity. Youth missed out on events like sleeping over at a friend’s house, going on a class field trip or prom, due to lack of an agency social worker who could attend and chaperone the event. Under the Act, consent for “normal” daily activities like “sports, field trips, and overnight activities lasting one or more days”<sup>3</sup> will shift from the child welfare agency to the foster parent. If the foster child lives in a group home or other institutional setting, a designated person will be charged with providing consent.

### ***The “reasonable and prudent parent standard”***

The key to ensuring “normalcy” is implementation of

the “reasonable and prudent parent standard.”<sup>4</sup> This is defined as the “standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver<sup>5</sup> shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.”<sup>6</sup> DCF is developing policy and training to assist foster parents in applying this standard in such a way that child safety is balanced with allowing children to “experience normal and beneficial activities.”<sup>7</sup> Vermont DCF will need to revise regulations or propose a bill to protect foster parents/designated officials from liability when they are in compliance with the reasonable and prudent parent standard. DCF is: revising case plans to normalize activities for children and youth of all ages, developing a webpage to provide guidance for foster parents and caregivers on how to apply prudent parenting standards, and revising regulations for residential treatment programs to include normalcy activities and expectations. DCF will work with the court system on revisions to the case plan template and how to best document the utilization of prudent parenting standards at Permanency Hearings.

The Act requires that the biological parents’ concerns are taken into account when decisions are being made under the reasonable and prudent parent standard, but their concerns “should not necessarily determine whether or not the child ends up participating in the

<sup>1</sup> Pub. L. [No. 113-183](#) (9/29/2014).

<sup>2</sup> Page 22 of *Issue Brief: The Role of the Court in Implementing the Youth Provisions of the Strengthening Families Act*, February 2016, by the ABA Youth Engagement Project, a project of the ABA Center on Children and the Law.

<sup>3</sup> 42 U.S.C. § 671 (a)(24).

<sup>4</sup> 42 U.S.C. § 675(10)(A).

<sup>5</sup> A “caregiver” is the child’s foster parent or the “designated official for a child care institution.” 42 U.S.C. § 675(10)(B)

<sup>6</sup> See *supra*, note 4.

<sup>7</sup> 42 U.S.C. § 671

activity.<sup>8</sup> Parents retain decision-making authority in areas like health care and education, unless that authority has been limited by the court.<sup>9</sup>

### **Building Connections**

The Act is intended to benefit foster youth by allowing them opportunities to “increase their social capital and help them successfully transition to adulthood.”<sup>10</sup> This is particularly relevant for youth who have Another Planned Permanent Living Arrangement (APPLA) as their permanency goal and will be aging out of care. (**NOTE:** The Act, in a significant change to laws regarding permanency, eliminates APPLA as a permanency goal for all youth under the age of 16. That topic will be addressed in in a future InfoBulletin.) As these young adults spend more time with friends and participating in community-based activities, inevitably they will form connections with potential mentors, employers, and other adults who can help anchor them as they exit foster care.<sup>11</sup>

### **Tips for judges**

Judges can set the expectation for normalcy for all youth in foster care. However, for youth with a current or proposed Permanency goal of APPLA, judges are required, at Permanency Hearings and other status reviews, to make findings on the steps DCF is taking to ensure the child has “regular, ongoing opportunities to engage in age or developmentally appropriate activities” and that the caregiver(s) (foster home or congregate care facility) is following the reasonable and prudent parent standard.<sup>12</sup> It is recommended that courts follow the same inquiry guidelines at Permanency Hearings for all children under age 16 who are in state custody, “given the importance of normalcy to child development and permanency,” but courts are not *required* to do so.<sup>13</sup> DCF will be focusing on normalcy for *all* children.

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<sup>8</sup> *Id.*

<sup>9</sup> *See supra* note 2 at 22.

<sup>10</sup> *See id.* at 23-24

<sup>11</sup> *Id.*

<sup>12</sup> *See supra* note 2 at 23.

<sup>13</sup> *See* Pub. L. No. 113-183 Sec. 112. *See also* Jennifer Pokempner, *Implementing the Older Youth Permanency Provisions of the*

### **Tips for children’s attorneys**

If your client is 16 or older and has a permanency goal of APPLA, you and your client should be prepared for the judge’s questions at Permanency Hearings (and at other hearings where these issues may be relevant) about what types of age appropriate activities your client is participating in, or would like to participate in, and any barriers to participation. Subject areas of questions you might ask your clients in preparation for hearing include how much time the youth gets to spend with peers and mentors; afterschool jobs, internships and sports activities; obtaining a driver’s license; and cultural activities. Discuss with the youth whether or not there are barriers to participation, including transportation issues. The judge will in all likelihood engage the youth in answering these types of questions and should be willing to issue orders that facilitate participation in these “normalcy” activities. A discussion of these issues and a good list of questions can be found in the ABA’s Issue Brief (see footnote 2).

### **Tips for GALs**

If you are a GAL, you should be talking with your assigned children about the activities they are involved in and explore what other activities may be of interest. For older youth, similar to children’s attorneys, spend some time talking to them about upcoming case plan reviews and/or hearings where they may be called upon to talk about their daily activities and any barriers they have encountered in accessing opportunities. You could also share ideas you have for activities that might be of interest to particular children and facilitate discussions with DCF/foster parents about any identified barriers, including transportation and consent issues. You should become familiar with the policies and/or directives DCF promulgates to train foster parents and designated institutional officials, so that you are clear on how information on the law is being imparted to these front-line decision-makers.

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*Strengthening Families Act: The Court’s Role*, Vol. 35 No. 5, American Bar Association, Child Law Practice (May 2016).