

Chapter 8

Voluntary Placements of Juveniles and Foster Care

18–21

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8.1 Introduction

There are times when foster care services and resources that are available from and provided by a county department of social services (DSS) will be voluntarily sought by a parent, guardian, and/or certain eligible young adults. When the statutory criteria are met, a placement agreement may be entered into between a county DSS and (1) a juvenile’s parents or guardian or (2) an eligible young adult. The agreement to provide a foster care placement and services to the family or young adult is not a court order and does not legally transfer custodial rights to DSS. Although court involvement is not required at the time a voluntary agreement is executed and implemented by the participating parties to that agreement, the Juvenile Code (G.S. Chapter 7B) requires that the district court conduct a judicial review of the placement and services provided by DSS. The Juvenile Code provisions focus on the judicial review and are silent as to procedures that apply when executing and implementing a voluntary agreement prior to the judicial review. *See* G.S. 7B-910; 7B-910.1.

Note, for purposes of this Manual, “department of social services” or “DSS” refers to a department as defined by G.S. 7B-101(8a) regardless of how it is titled or structured.

This Chapter discusses the two types of voluntary agreements that require a judicial review by the district court:

- a voluntary foster care placement of a juvenile, often referred to as a “voluntary placement agreement” (VPA) and

- a voluntary foster care placement of a young adult who chooses to receive extended foster care by participating in the state’s Foster 18–21 program.

See G.S. 7B-910; 7B-910.1.

8.2 Voluntary Placement Agreement for a Juvenile

A. The Agreement¹

Some DSSs occasionally enter into a voluntary placement agreement (VPA) with a juvenile’s parents or guardian. Initiation of a VPA does not involve court action; instead, it is a mutual agreement between the DSS and child’s parents or guardian. When a VPA is executed, DSS obtains placement responsibility for the child based upon the parents’ (or parent’s) or guardian’s consent. *See* 10A N.C.A.C. 70B.0102(a)(3).² A child who is the subject of the VPA receives the same child placement services as a child who is the subject of a court order in an abuse, neglect, or dependency action that grants DSS custody or placement responsibility of the child. The family receives and participates in services; case reviews by DSS are conducted; and a permanency planning action team (PPAT), which includes the parents (or guardian) and child, is assembled. The child is placed in an appropriate setting, such as a licensed foster home. Because legal rights do not transfer with the execution of the VPA, there may be provisions that allow the parents or guardian to authorize DSS to consent to certain types of medical and mental health care for the child, such as routine and emergency care. Consent or authorization to consent for other types of services or activities for the child may also be included in the VPA.

Because a VPA is a voluntary foster care placement, it is child custody proceeding governed by the Indian Child Welfare Act (ICWA). *See* 25 U.S.C. 1903(1); 25 C.F.R. 23.2. If the child who is the subject of the VPA is an “Indian child” as defined by 25 U.S.C. 1903(4), DSS must comply with the applicable provisions of ICWA. The North Carolina Department of Health and Human Services (DHHS) Division of Social Services policy addresses the execution of a VPA when ICWA applies and states that the VPA must be “signed before a judge of competent jurisdiction” and be “accompanied by a judge’s certification” that the agreement was fully explained and understood by the parent or Indian custodian. 1 DIV. OF SOC. SERV., N.C. DEP’T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL 1201(IV) (April 2017). Note, DSS polices, currently located [here](#), are being revised. The policy discusses additional provisions that should apply when an Indian child is the subject of the VPA. For a discussion of ICWA, see Chapter 13.2.

¹ The source for some of the content in this section is 1 DIV. OF SOC. SERV., N.C. DEP’T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL 1201(I) (April 2017), (IV) (April 2017), (VIII) (Dec. 2015) and the DSS-1789 form. Note, DSS polices, currently located [here](#), are being revised. DSS forms can be found [here](#).

² Title 10A of the North Carolina Administrative Code (N.C.A.C.) applies to Health and Human Services, and Chapter 70 governs Children’s Services. The provisions of 10A N.C.A.C. 70 are the governing rules (or regulations) promulgated by the North Carolina Social Services Commission. See Chapter 1.3.A.2 (discussing the N.C.A.C. and the Social Services Commission).

The VPA designates a period of time that the agreement lasts, but it may be terminated earlier by either party. VPA placements are time limited and must be reviewed by the court if the child does not return to the parent or guardian within ninety days of placement. G.S. 7B-910(c); *see* 10A N.C.A.C. 70B.0102(a)(2).

Note that DSS is not precluded from conducting an assessment for abuse, neglect, or dependency and if required, filing a petition in district court thereby initiating an abuse, neglect, or dependency action, during the period a VPA is in effect.

NC DHHS DSS Form:

DSS-1789, [Voluntary Placement Agreement](#) (Oct. 2010).

Resource: Information about Voluntary Placements Agreements is not found in one specific section of the DHHS Division of Social Services policy. For some applicable provisions, see 1 DIV. OF SOC. SERV., N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL 1201(I) (April 2017), (IV) (April 2017), (VIII) (December 2015). Note, DSS polices, currently located [here](#), are being revised.

B. Judicial Reviews, Timing, and Duration

The district court has exclusive, original jurisdiction over a judicial review of a voluntary placement agreement (VPA) for a juvenile. G.S. 7B-200(a)(5).

Within ninety days of the child's voluntary placement, the court must conduct a review. An additional review must take place within the next ninety days, and any other review hearings may be conducted on the court's own motion or by motion of the parents, guardian, foster parents, or DSS director. The clerk must provide at least fifteen days' advance written notice of these hearings to the parents or guardian, the juvenile if 12 or older, the DSS director, and any other person the court may specify. G.S. 7B-910(c).

A child may not remain in a voluntary placement for more than six months without DSS filing a petition alleging abuse, neglect, or dependency. G.S. 7B-910(c). *See* 10A N.C.A.C. 70B.0102(a)(2).

C. Purpose and Requirements of Hearing

At the review hearing for a voluntary placement, the court determines whether to (1) approve or disapprove the child's continued placement in foster care on a voluntary basis or (2) direct DSS to petition for legal custody if the placement is to continue. G.S. 7B-910(b). The court must make findings from evidence that is presented as to

- the voluntariness of the placement;
- the appropriateness of the placement;
- whether the placement is in the child's best interests; and

- services that have been or should be provided to the parents, guardian, foster parents, and child either to improve the placement or eliminate the need for the placement.

G.S. 7B-910(a).

Practice Note: At a review hearing of a voluntary placement, the court does not have jurisdiction to direct orders to the parents, caregivers, or child. The court has jurisdiction to order DSS to file a petition. An indigent parent is not entitled to appointed counsel, and the child is not represented by a guardian ad litem. The voluntary nature of the placement means that the parents or guardian may reassume custody of the child at any time, unless DSS has filed a petition alleging abuse, neglect, or dependency and obtained a nonsecure custody order.

8.3 Foster Care 18–21

A. Introduction

Some children will not achieve permanency before aging out of foster care. Others, who were unable to reunify or return home, obtained a permanent safe home at an older age. Effective January 1, 2017, North Carolina offers Foster Care 18–21, a program that provides extended foster care services and benefits to young adults who have aged out of foster care upon turning 18 or found permanency through an adoption or guardianship when 16 or 17 years old. *See* S.L. 2015-241, sec. 12C.9; *see also* 10A N.C.A.C. 70P.0104(6).

Foster Care 18–21 is a voluntary program that assists older youth in foster care in making a successful transition to adulthood. Most of the information about the program is written in the state policy.

Resources:

For more information about Foster Care 18–21, see

- 1 DIV. OF SOC. SERV., N.C. DEP'T OF HEALTH & HUMAN SERVICES, FAMILY SERVICES MANUAL 1201(XII) (Dec. 2016). Note, DSS polices, currently located [here](#), are being revised.
- Sara DePasquale, [Foster Care Extended to Age 21](#), UNC SCH. OF GOV'T: ON THE CIVIL SIDE BLOG (Jan. 11, 2017).

For more information about extended foster care generally and links to additional resources, see

- [“Extending Foster Care Beyond 18”](#) on the National Conference of State Legislatures website.
 - CHILD WELFARE INFORMATION GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVICES, [“Extension of Foster Care Beyond Age 18”](#) (Feb. 2017).
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B. Eligibility and the Agreement

The Foster Care 18–21 program is available to young adults who (1) aged out of foster care upon turning 18, (2) were adopted at age 16 or 17, or (3) were placed in a legal guardianship arrangement at age 16 or 17 when guardianship assistance was provided. *See* G.S. 108A-48(c); 108A-49(e); 131D-10.2B. *See also* G.S. 108A-49.1 (foster care and adoption assistance rates); 10A N.C.A.C. 70P.0104(6) (guardianship assistance program). The young adult may choose to participate in the program at any time prior to his or her 21st birthday. G.S. 131D-10.2B(a).

Prior foster care status of a young adult is not the only criteria for participation in the program. A young adult is eligible to participate in the Foster 18–21 program when he or she is

- completing high school or another educational program that leads to an equivalent credential,
- enrolled in an institution that provides post-secondary or vocational education,
- participating in a program or activity designed to promote or remove barriers to employment,
- employed for at least eighty hours a month, or
- incapable of completing the educational or employment requirements because of a medical condition or disability.

G.S. 108A-48(c).

A voluntary placement agreement is entered into between the young adult and the county DSS. *See* G.S. 7B-910.1; 131D-10.2B. A young adult participating in Foster Care 18–21 receives foster care benefits and services designed to assist the young adult in transitioning to independent living and adulthood and includes monthly financial benefits, placement, and case work focused on a transitional living plan. The law requires that if the young adult is residing outside of a foster care facility and is living in a college dormitory or other semi-supervised housing arrangement that has been approved by DSS, DSS must provide monthly supervision and oversight to the young adult. *See* G.S. 108A-48(d). Note that the young adult is of the age of majority and competent to contract for himself or herself. DSS does not have custody of or decision-making responsibility for the young adult.

NC DHHS DSS Forms:

- DSS-5097, [Voluntary Placement Agreement for Foster Care 18 to 21](#) (Jan. 2017).
 - DSS-5099, [Placement Agreement for Foster Care 18–21](#) (Jan. 2017).
 - DSS-5098, [North Carolina Monthly Contact Record for Foster Care 18–21](#) (Jan. 2017).
 - DSS-5096a, [Transitional Living Plan for Youth/Young Adults in Foster Care](#) (Jan. 2017).
 - DSS-5096c, [Transitional Living Plan – 90 Day Transition Plan for Young Adults in Foster Care 18–21](#) (Jan. 2017).
 - DSS-5096d, [Transitional Living Plan – Helpful Resources for Young Adults](#) (Jan. 2017).
 - DSS-5100, [Semi-Supervised Independent Living Assessment Tool](#) (Jan. 2017).
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C. Judicial Reviews, Timing, and Parties

The district court has exclusive, original jurisdiction over a judicial review of a placement of a young adult in foster care. G.S. 7B-200(a)(5a). All documents filed in a proceeding to review a voluntary foster placement for a young adult shall establish a new case file and receive a new juvenile file number. There is no associated filing fee for these proceedings. *See* Rule 12.1.2, Chapter XII, Rules of Recordkeeping Procedures for the Office of the Clerk of Superior Court in Appendix 4.

Within ninety days of the execution of the voluntary Foster Care 18–21 agreement, the court must conduct a review. G.S. 7B-910.1(a). Additional review hearings may be held upon the written request of the young adult or DSS director. G.S. 7B-910.1(b). The clerk must provide at least fifteen days' advance written notice of these hearings to the young adult and the DSS director. G.S. 7B-910.1(c).

There are two parties to the judicial review proceeding: the young adult and DSS. G.S. 7B-401.1(i). The young adult, who is no longer a juvenile, is not represented by a guardian ad litem (GAL). G.S. 7B-910.1(c). There is no statutory provision authorizing appointed counsel to represent the young adult.

AOC Form:

AOC-J-141, [Notice Of Hearing In Juvenile Proceeding](#) (Abuse/Neglect/Dependency) (Jan. 2017).

Practice Note: Any GAL appointment in the underlying abuse, neglect, or dependency case that is still in effect when the juvenile turns 18 expires with the termination of the court's jurisdiction in that action. *See* G.S. 7B-200(a). Although no longer in a GAL role, a member of the GAL team may be called as a witness by one of the parties in the judicial review hearing if the GAL has relevant information for the court to consider.

D. Requirements of the Hearing

At the review hearing, the court must make findings, based on evidence presented at the hearing, of all of the following:

- whether the placement is in the young adult's best interests;
- the services that have been or should be provided to the young adult to improve the placement; and
- if relevant, the services that have been or should be provided to the young adult to further his or her education or vocational ambitions.

G.S. 7B-910.1(a).