

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on June 19, 2019, the following order was made and entered **in vacation**:

RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO THE WEST VIRGINIA RULES OF PROCEDURE FOR CHILD ABUSE AND NEGLECT PROCEEDINGS, Case No. 19-RULES-12

On this day came the Court and proceeded to consider proposed amendments to the West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. The Court has jurisdiction pursuant to Article VIII, § 1 of the West Virginia Constitution.

Upon review, the Court is of the opinion that the proposed amendments should be published for comment for a period of thirty days. Comments must be filed in writing with the Clerk of the Court on or before July 19, 2019.

The proposed amendments are set forth below. The proposed additions are indicated by underscoring.

West Virginia Rules of Procedure for Child Abuse and Neglect Proceedings

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Rule 3. Definitions.

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(p) A “qualified residential treatment program” shall mean a residential treatment program which includes a trauma-informed treatment model that addresses the needs of a child with serious emotional or behavioral disorders and shall implement the individualized treatment plan identified in the required assessment.

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Rule 55. Qualified Residential Treatment Programs.

(a) When the placement of a child in a qualified residential treatment program is proposed, an independent evaluator designated by the Department shall:

(1) Assess whether the child’s needs could be met in a lesser restrictive environment, including in a child’s home or in a foster family home; and

(2) Develop a list of child-specific short and long term mental and behavioral health goals. The assessment shall be conducted before the child is placed in a qualified residential treatment program, and the written report shall be submitted to the court, except for good cause shown, no

later than 20 days prior to the date that a child is to be placed in the qualified residential treatment program. The assessment shall also be provided to the members of the multi-disciplinary treatment team.

(b) No later than 10 days after the receipt of the report recommending placement of a child in a qualified residential treatment program, the court shall:

(1) Review the assessment on the record, or conduct a hearing, either sua sponte or upon the motion of any party to the case with regard to the placement of the child in the qualified residential treatment program;

(2) Determine whether the needs of the child can be met through placement in a foster family home or, if not, whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement is consistent with the short and long term goals for the child, as specified in the permanency plan for the child;

(3) Approve or disapprove the placement by order, including an agreed order; and

(4) In the event that the court disapproves placement of the child in the proposed residential treatment program, the court shall either make written findings of fact and conclusions of law as to why the court finds such placement contrary to the best interest of the child or set forth such findings of fact and conclusions of law in the record at the evidentiary hearing.

(c) The court shall also consider whether the Department has made reasonable efforts to achieve permanency for the child and set forth such findings in its order.

(d) In any event, the final decision of the court shall be made and the order in regards thereto shall be entered no later than 60 days from the date of the filing of independent evaluation with the court.

(e) As long as a child remains placed in a qualified residential treatment program, the Department shall submit evidence at each status review and each permanency hearing held with respect to the child:

(1) Demonstrating that ongoing assessment of the strengths and needs of the child continues to support the determination that the needs of the child cannot be met through placement in a foster family home, that the placement in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement is consistent with the short and long term goals for the child, as specified in the permanency plan for the child;

(2) Documenting the specific treatment or service needs that will be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(3) Documenting the efforts made by the Department to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

A True Copy

Attest: /s/Edythe Nash Gaiser
Clerk of Court

