State of West Virginia Department of Human Services

Legal Guardianship Policy

Bureau for Social Services

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SECTION 1 – INTRODUCTION AND OVERVIEW

1.1 Mission, Vision, and Values

The Bureau for Social Services mission is to promote the safety, permanency, and well-being of children and vulnerable adults, supporting individuals to succeed, and strengthening families. Our vision is for all West Virginia families to experience safe, stable, healthy lives and thrive in the care of a loving family and community. Our values include professionalism, integrity, excellence, relationships, and staff contributions.

1.2 Philosophical Principles

Safety is the paramount concern that must guide all child welfare services. When making decisions about a child, including those decisions regarding services provided, placement and permanency planning, the safety of the child must be the foremost issue in determining what is in the best interest of the child.

Permanency planning efforts should begin as soon as a child enters the custody of the department or when it appears it may happen. This is done through concurrent planning. Concurrent planning should be utilized to allow staff to work to reunify the family while simultaneously planning for the possibility that reunification will not succeed. All possible resources should be considered to arrive at the least restrictive, appropriate environment for the child. Priority consideration must be given to the child's relatives for the most suitable placement provided the best interest of the child is the primary consideration. Throughout the life of the child's case, appropriate family members should be sought out and considered for placement of the child or for family connections with the child.

The creation of a permanent family for children in custody is the main objective for children that are unable to be reunified with their family of origin. Adoption must be the primary choice for permanency planning, with other alternatives being considered only after adoption has been ruled out. Once reunification and adoption have been ruled out, legal guardianship may be considered provided it would be in the child's best interest.

1.3 Permanency Placement Options

The federal government acknowledges only four primary permanency options for children in foster care:

- Reunification
- Adoption
- Legal Guardianship
- Placement with a fit and willing relative (kinship care)
- Other Planned Permanent Living Arrangement (OPPLA)

A legal guardianship is a judicially created and a legally binding relationship between a child and caregiver which is intended to be permanent and self-sustaining as evidenced by the transfer to the caregiver of the following parental rights with respect to the child: protection, education, care and

control, custody and decision making. Parental rights are not required to be terminated in order to sanction a legal guardianship under W. Va. Code §49-4-112. The Fostering Connection to Success and Increasing Adoptions Act 2008 (Fostering Connections) allows for the state to enter into guardianship agreements to provide subsidized payments to grandparents and other kinship/relative caregivers who have assumed the legal guardianship on a permanent basis of children for whom they have cared for as a certified kinship/relative caregiver. The Fostering Connections Act allows for Title IV-E reimbursement for these payments to kinship/relative legal guardians. In West Virginia, the department has defined kinship/relatives for the purposes of the placement of children as "any person related to the child by blood or marriage including cousins and in-laws. This includes persons who the child considers a relative, such as a godparent or significant others whom the child claims as kin may also be considered as a placement resource". Legal guardianship is still permitted with non-kinship/relatives but will not be IV-E reimbursable.

West Virginia Code provides for the department to utilize legal guardianship as a viable permanency option once reunification and adoption have been ruled out. Legal guardianship was added to the West Virginia Code in 1998 as a result of the 1997 Adoption and Safe Families Act (ASFA; PL 105-89).
For a more thorough discussion on permanency options, refer to *Foster Care Policy Section*, *Permanency Planning.*

This policy is to be taken into consideration with Child Protective Services, Youth Services, and Foster Care policies. Specifically sections on assessments and case plans are of particular relevance.

1.4 Legal Basis for Legal Guardianship

The department is given the responsibility to provide child welfare services to the children of West Virginia through Chapters 48 and 49 of the West Virginia Code. The Rules of Procedure for Child Abuse and Neglect Proceedings issued by the Supreme Court of Appeals of West Virginia (Court) and opinions entered by the Court in various cases also provide further interpretation and clarification of the statutes. The statutes may be found on the internet at wvlegislature.gov. The Rules of Procedure for Child Abuse and Neglect Proceedings and Court Opinions may be found on the internet at www.state.wv.us/wvsca.
For additional legal/regulatory guidance impacting permanency, *see Adoption Policy.*

1.5 General Definitions

Term	Definition
Abandonment	Any conduct by the birth mother, unknown mother, legal father, determined father, birth father, unknown father or putative father that demonstrates a purpose to forgo all duties and relinquish all parental claims to the child. See, W. Va. Code §49-1-201
Adoption	The judicial act of creating the relationship of parent and child where it did not exist previously. See, W. Va. Code §48-23-203

Adult	A person who is eighteen years of age or older. See, W. Va. Code §49-1-202
Agency	A public or private entity, including the Department of Human Services, that is authorized by law to place children for adoption or legal guardianship. See, W. Va. Code §48-22-104
Birth Father	The biological father of a child. See, W. Va. Code §48-22-105
Birth Mother	The biological mother of a child. See, W. Va. Code §48-22-106
Child	An individual under the age of eighteen years who is not emancipated. See, W. Va. Code §49-1-202
Comprehensive Child Welfare Information System (CCWIS)	A statewide computerized case management system for all Child Welfare and Adult Service Programs. This system is in compliance with Federal requirements for a Statewide Automated Child Welfare Information System.
Concurrent Planning	A permanency planning strategy for assuring an expedient permanent placement for a child by simultaneously planning for reunification and an alternative permanent placement such as adoption or legal guardianship. See, W. Va. Code §49-4-604
Conditional Subsidy	Also referred to as **Deferred Subsidy**. Families with deferred subsidy agreements have the option of negotiating payments in the future, should the child's needs or family's circumstances warrant a monetary subsidy.
Crime Victim's Compensation Fund	A special revenue fund within the state Treasury established by the Crime Victims Compensation Act, created by the West Virginia Legislature, which can be utilized for victims of crimes (including minors in civil abuse and neglect cases) for payment of expenses attributed to or caused by their victimization. *(See also Foster Care Policy)* See, W. Va. Code §14-2A-11a
Disruption	A process that ends after the child is placed in a legal guardianship home and before it is legally finalized, resulting in the child's return to (or entry into) foster care or placement with new legal guardians. See, W. Va. Code §49-4-606
Guardian Ad Litem (GAL)	The court-appointed attorney assigned to the child during the abuse and neglect proceedings. This person's responsibility to the child continues until permanency is achieved. See, W. Va. Code §49-4-601(f) and WV Child Abuse and Neglect Proceedings Rule 18a
Home Study	A home study or family assessment is the process by which information is gathered and evaluated to assess a family's ability to provide care for children who may be placed in the home through foster care. This assessment includes evaluating the physical environment of the home for safety and to determine

	adequate space, the family's capacity for parenting, as well as the family's motivation and commitment to providing a safe, caring environment for children.
Interstate Compact for the Placement of Children (ICPC)	An agreement that has been enacted into law by all 50 states in the United States and the District of Columbia, which controls the lawful movement of all children from one state to another from the purpose of placement.
Legal Guardianship	The permanent relationship between a child and a caregiver, established by order of the court having jurisdiction over the child or juvenile. This arrangement transfers all the rights and responsibilities for a child from the department to the caregiver through a court sanctioned process. Parental rights are not required to be terminated for a child to be in a Legal Guardianship. A monthly maintenance subsidy, medical card, and non-recurring subsidy may be provided to eligible children placed in an approved home to ease the financial burden of caring for the child. See W. Va. Code §49-1-204
Multidisciplinary Treatment Team (MDT)	A team designed to assess, plan, and implement a comprehensive, individualized caseservice plan for a child who is involved in court proceedings either because of child abuse and neglect, status offense, or delinquency proceedings. This team includes the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child, the child if over the age of 12 or the child's participation is deemed appropriate, the Guardian Ad Litem, the prosecuting attorney, and any other person who may contribute to the team's efforts to assist the child and the family. See W. Va. Code §49-4-405 and §49-4-406
Non-recurring Expenses	Non-recurring expenses are one-time expenses directly related to the finalization of a child with special needs. Typical expenses that are paid or reimbursed to the family include the home study fees, replacement of the birth certificate, and travel to and from the child, including mileage, lodging and meals.
Permanency Plan	A formal written part of the Child's Case Plan that determines the permanent placement for a child in the state's custody. Permanent placements include reunification, adoption, legal guardianship, or placement with a fit and willing relative. If those options have been exhausted, the court may consider other planned permanent living arrangements such as emancipation or continued foster care. See W. Va. Code §49-1-201
Placement with a fit and willing relative	If reunification or adoption is not in the child's best interest, the court may place the child with a suitable adult relative who has made a commitment to provide a suitable and permanent home for the child until the child reaches

	the age of majority and to prepare the child for adulthood and independence. Permanent placement with a fit and willing relative does not terminate the parent-child relationship, therefore the child may still inherit from the biological parents and the biological parents may still be ordered by the court to provide financial and medical support.
Kinship/Relative Care	Services provided by any person related to the child by blood or marriage including cousins and in-laws. Persons the child considers a relative, such as a godparent or significant others the child claims as kin may also be considered as a placement resource.
Reunification	When children must be removed from their birth families for their protection, the permanency goal is to achieve reunification with the birth as safely as possible. See W. Va. Code §49-4-604
Sibling	Children who have at least one biological parent in common or who have been legally adopted by the same parent or parents. See W. Va. Code §49-1-204
Subsidized Legal Guardianship	Subsidized legal guardianship is the transfer of legal responsibility for a minor child from the state to a private certified caregiver or guardian, who is provided with a monthly subsidy and/or medical card for the care and support of the child. The transfer of legal responsibility removes the child from the child welfare system, allows a caregiver to make important decisions on the child's behalf, establishes a long-term caregiver for the child, and addresses their financial needs through ongoing subsidy. See W. Va. Code §49-4-112

SECTION 2 – LEGAL GUARDIANSHIP INTAKE

Legal guardianship is the permanent transfer of legal responsibility for a child in state custody to a kinship/relative caregiver or an individual other than the child's parents. Unless specified otherwise by the court, a grant of custody of a child to the department by the court is sufficient for the department to transfer legal guardianship. The department may consent to the transfer of legal guardianship when certain conditions are met.

2.1 Eligibility for Legal Guardianship

The decision to pursue subsidized legal guardianship as a permanency option is to be made by the Multidisciplinary Treatment Team (MDT). The membership of the MDT is specified in W. Va. Code §49-4-405, there may be additional parties as is necessary on a case-by-case basis. The decision to pursue legal guardianship must be in the child's best interest and must be so documented.

Once the decision has been made to change the permanency plan to legal guardianship, the child welfare worker must notify the legal guardianship specialist by email at bsslegalguardianship@wv.gov of the plan change and the effective date of change. The email will contain:

- The child's name,
- Child's person ID,
- The case ID,
- The date the permanency plan changed to legal guardianship, and
- The date of the next scheduled hearing.

Within the Unified Child or Family Case Plan (Case Plan), filed with the court prior to disposition, the child welfare worker must recommend legal guardianship as the permanency plan for the child and detail the steps necessary to achieve permanency.

Legal guardianship should be considered for a child when the following conditions have been met:

- The permanency goals of reunification and adoption have been ruled out by the Multidisciplinary Treatment Team for the child and the reasons are documented in the case record.
- The child has resided with the prospective guardian for at least six months immediately prior to establishing legal guardianship and was eligible for foster care maintenance payments.
- The guardianship home was certified or approved as meeting the requirements as a foster home during the six months prior to establishing legal guardianship.
- Adoption should be encouraged for children, unless it is decided by the MDT that it would be in the child's best interest to do legal guardianship.
- The best interest determination must be documented in the child's case plan.
- The child must have a strong attachment to the prospective legal guardian and the guardian must have a strong commitment to permanently care for the child.
- The child who is 14 years of age or older, has been consulted regarding the guardianship arrangement.

For a child who does not meet these eligibility requirements for legal guardianship, the child welfare worker will work with the MDT to determine what is in the child's best interest and if necessary, develop an appropriate and alternative permanent living arrangement to be included in the child's case plan.
For a child who does meet the criteria for legal guardianship, the child welfare worker must assess the appropriateness of the case for this permanency plan. A child may be considered for legal guardianship even though it is not the permanency goal for all children in a sibling group.

2.2 IV-E Eligibility in Legal Guardianship

The Fostering Connections Act has made it possible for a relative legal guardianship setting to qualify for Title IV-E funding. For this to occur, the child had to be Title IV-E eligible while in foster care with the prospective relative guardian for six consecutive months.

In order to be eligible to receive IV-E reimbursable kinship guardianship assistance, a child must be eligible for Title IV-E foster care maintenance payments in the prospective relative guardian's home. This means that a child must meet all eligibility requirements for Title IV-E foster care including the requirement that:

- The child was removed from an Aid to Families with Dependent Children (AFDC)-eligible home pursuant to a voluntary placement agreement
- A judicial determination that continuation in the home would be contrary to the welfare of the child
- The child is placed in a certified or approved home.

The child does not have to be receiving those payments while in the relative guardian's home. In this case, the distinction between being eligible for and receiving Title IV-E assistance may be a distinction with no real meaning. Fostering Connections requires a child to be in foster care for at least six consecutive months with the prospective kinship/relative caregiver before finalizing the legal guardianship and receiving the subsidy. It is likely therefore that foster care payments will be paid and, since the child is eligible for Title IV-E foster care, it is likely that the child will receive federally reimbursed legal guardianship payments. (§473(d)(3)(A)(i); P.L. 110-351 §101(b); ACYF-CB-PI-08-007 p. 2; ACYF-CB-PA-01-02)

SECTION 3 – CASE PLAN

The case planning process must be followed for a child being placed in a legal guardianship placement as it would for any other child in foster care. Per Section 475(1)(F) of the Social Security Act the IV-E agency must describe the following in the case plan:

- How the child meets the eligibility requirements of legal guardianship.
- The steps the agency has taken to determine that reunification or adoption is not appropriate.
- The efforts the agency has made to discuss adoption with the child's kinship/relative caregiver and the reasons why adoption is not an option.
- The efforts the agency has made to discuss kinship/relative guardianship with the child's parent(s) or the reasons why efforts were not made.
- The reason why a permanent placement with a prospective kinship/relative caregiver and receipt of a kinship/relative guardian assistance payment is in the child's best interest; and
- The efforts made by the agency to discuss with the child's parent(s) the kinship/relative guardianship assistance arrangements or why efforts were not made.

If the child's legal guardian placement does not include the child's siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement. If an order of sibling separation has not been previously entered by the court and the Unified Child or Family Case Plan includes placement of a child in a legal guardianship separate from the child's siblings, the child welfare worker must secure a sibling separation order which finds that it is in the best interest of

the child not to be placed in the same home as the child's sibling(s). The order must be documented on the legal actions screen in CCWIS.

As a result of Fostering Connections, when a child is placed in a IV-E reimbursable kinship/relative legal guardianship placement, the department may make IV-E reimbursable guardianship assistance payments on behalf of each sibling of the eligible child if they are placed with the same kinship/relative caregiver under the same kinship/relative guardianship arrangement, provided this placement is appropriate for each sibling and is so documented in each child's case plan. (Section 473(d)(3)(B) of the Social Security Act).

SECTION 4 – CASE MANAGEMENT

4.1 Placement

When planning the placement of the child into legal guardianship, the child welfare worker must request a copy of the home study, any updates that have been made to the home study, and a copy of the most current recertification that shows that the home is currently certified. The child welfare worker can request a copy from the child welfare placement worker or initiate the Interstate Compact on the Placement of Children (ICPC) process if the prospective legal guardian resides in another state.

For custody of a child in foster care to be transferred to a legal guardian, the department must consent to the transfer. The child welfare worker must request consent from the legal guardian specialist for the transfer of custody from the department to the prospective legal guardian. The signed copy must be included in the child's paper record and reflected in document tracking in CCWIS and scanned into the case document uploads.

4.2 Subsidy

Financial Subsidy

It is the responsibility of the child welfare worker to determine the child's eligibility for subsidized legal guardianship and to inform the interested caregiver of the child's eligibility. If the caregiver requests to receive subsidy benefits to aid in providing for the present and/or future needs of the child, the child welfare worker will negotiate and enter a written, binding *Legal Guardianship Subsidy Agreement* with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. The *Subsidized Guardianship Application* form is located in CCWIS. Section 473(d)(1)(B) of the Social Security Act prescribes certain requirements for the Legal *Guardianship Assistance Agreement*.

It must specify the following:

- The amount of, and manner in which the kinship guardianship assistance payment will be provided to the prospective guardian.
- The additional services and assistance for which the child and relative guardian will be eligible under the agreement.

- The procedure by which the relative guardian may apply for additional services. Additionally, the legal guardianship assistance agreement must provide that the agreement will remain in effect without regard to the state of residency of the guardian pursuant to 473(d)(1)(C) of the Social Security Act.

The *Legal Guardianship Assistance Agreement* outlines specific requirements and responsibilities of the legal guardian(s) and DoHS. The monthly subsidy is used to provide for the needs of the child through age 18, and up to age 21, in circumstances where the youth qualifies to receive a continued subsidy. The subsidy is considered a supplement to the legal guardian(s) income for the purpose of assisting with food, clothing, shelter, educational services, and other expenses for the child. The Bureau for Social Services does not agree to pay any additional amount above the agreed upon financial assistance outlined in the legal guardianship assistance agreement, including post-legal guardianship child care.

Legal guardians who provided foster care for the child prior to legal guardianship through the department or a child placing agency will receive a monthly maintenance payment no less than $790.00 per child unless a rate increase is approved. Children ages 6-12 qualify for a monthly maintenance payment of $851.00. Children ages of 13-21 qualify for a monthly maintenance payment of $942.00. Children ages 0-5 are not eligible for an increase at the time of the sanctioning of legal guardianship beyond $790, unless they turn six years old prior to the Court sanctioning. It is the responsibility of the legal guardian to report the receipt of the legal guardianship subsidy to any other agency that may be supplying the child any other support benefits. Subsidy rate increases are only considered in circumstances when a special needs child has extraordinary medical expenses that are not covered by Medicaid, the family's insurance, and the child is not eligible for IDD waiver, or is on the waitlist. Subsidy rate increases will require a waiver from the Division of Children and Adult Services. Legal guardians must contact the post legal guardianship specialist at bsslegalguardianship@wv.gov if they are seeking adjustments to post legal guardianship subsidy payments.

Additional services are available after the legal guardianship has been finalized through socially necessary services. The same services that are available for post-adoption are available for post-legal guardianship. To access these services, the family will contact the legal guardianship specialist at bsslegalguardianship@wv.gov. This subsidy application must be completed, approved and an agreement signed by the legal guardian before the transfer of custody is finalized. After guardianship has been legally transferred, a new agreement for subsidy cannot be entered into in the future with the same legal guardian but it may be amended.

For the purposes of assuring the child will continue to be cared for in the event the legal guardian should pass away or otherwise be unable to care for the child, the agreement must name a primary and secondary successor guardian. In addition to naming a primary and secondary successor guardian, the agreement must also allow for the ability for the guardian to modify the named successor guardians in the event either the primary or secondary are unable to fulfill their responsibilities. Provided the legal guardian names a successor guardian(s), there would be no termination of subsidy on the child's behalf and the child would not have to return to the care, custody, and control of the department. The parties,

including the department, will call the original MDT and go before the court to have the new guardianship legally sanctioned. When disruption occurs in a legal guardianship case, the county of jurisdiction is responsible for managing the case.

The subsidy may be paid monthly until the child is 18 or the child is emancipated; however, the child's subsidy may be extended on a yearly basis, up to age 21, if the child meets any of the following conditions:

- Completing secondary education or a program leading to an equivalent credential.
- Enrolled in an institution which provides post-secondary or vocational education.
- Participating in a program or activity designed to promote, or remove barriers to employment.
- Employed for at least 80 hours per month; or
- Incapable of doing any of the above-described activities due to a documented and verified medical condition.

The legal guardianship annual review will be used to document if the child is meeting one of the conditions to continue subsidy payments. Failure to return the review can result in a suspension or termination of the subsidy payment. The legal guardianship annual review form is required for all children who receive a legal guardianship subsidy. Under Fostering Connections, agencies must ensure that all children receiving federal assistance (kinship guardianship, adoption, or foster care) are enrolled and attending school. [(§471 (a)(30); P.L. 110-351 §204(b)]

Conditional/Deferred Subsidy

If an eligible child has no immediate need for a subsidy, the legal guardian must be encouraged to at least enter into a conditional/deferred subsidy agreement to provide for the consideration and protection of the child's future needs. The conditional/deferred subsidy may be adjusted to a negotiated amount if the family's circumstances or the child's needs change. The amount will be determined by the age of child when the legal guardianship was sanctioned. This amount cannot exceed the established West Virginia foster family care rate at the time of the execution of this agreement. This monthly subsidy amount is considered final and non-negotiable.

Medical Coverage

Planning for the child's medical coverage shall include a review of any health insurance or medical coverage available to the child through the prospective legal guardian's insurance/medical coverage. To the fullest extent possible, the child will be included under the legal guardian's health insurance. Medical benefits as provided under Title XIX of the Social Security Act, (Medicaid) will be available to an eligible child who qualifies for subsidized legal guardianship through the issuance of a medical card based on this review. All states will provide medical care for the youth if they are IV-E eligible. Not all states provide medical coverage if the child is not IV-E eligible. Medicaid is available regardless of the state of residence and most states have a Medicaid agreement of reciprocity through the Interstate Compact on Adoption and Medical Assistance (ICAMA). If the child moves to a state that does not have a reciprocity agreement, the legal guardian will continue to receive a West Virginia Medicaid card and must locate

providers who are willing to become West Virginia Medicaid providers. If the legal guardian is unable to locate willing providers, they must first use their primary private insurance. Requests for payment reimbursement for services not covered are considered on a case-by-case basis by the Division of Children and Adult Services. The agreement for reimbursement must be secured by the legal guardian prior to obtaining the service.

Non-recurring Expenses

A one-time only payment – per legal guardianship episode, not to exceed two thousand dollars ($2,000.00) per child, is available to cover legal fees, transportation costs, home study fees and other expenses related to the transfer of legal guardianship of a child in state custody. This will also be available for successor guardians. If the amount of legal fees is $2000.00, then no other expenses will be covered. The *Legal Guardianship Subsidy Agreement* shall recognize and provide for direct payment by the department of attorney's fees to an attorney representing the legal guardian. The payment for attorney's fees must be made directly to the attorney representing the legal guardians, unless the attorney representing the legal guardian instructs the department to pay the legal guardian directly. In order to be set up for direct payment, the attorney must complete and submit a W-9 form to the department. To issue the payment directly to the legal guardian's attorney, the legal guardianship specialist must enter a demand payment in CCWIS. Under provider search criteria, the legal guardianship specialist will select the category as "miscellaneous" and type as "other provider". In the comment screen, the legal guardianship specialist will enter "Legal Guardian Attorney Fee".

Worker Actions to Set Up Subsidy

- The child welfare worker will enter the type and amount of the subsidy in the appropriate screens in CCWIS. The legal guardianship court sanction date must be entered as this drives payment and medical coverage. The legal guardian provider must be set up as a legal guardianship provider in CCWIS and linked to the child on the legal guardianship screen.
- The child welfare worker will generate the *Application for Subsidized Guardianship* report and the *Legal Guardianship Subsidy Agreement* from CCWIS and obtain the legal guardian's signature. There must be an original *Legal Guardianship Subsidy Agreement* signed by the legal guardian. This person could be a foster parent or kinship/relative caregiver. The child welfare worker will update document tracking in CCWIS and upload to document uploads.
- Before submitting to the legal guardianship specialist for approval of agreement, etc. be sure the legal fee is entered.
- The child welfare worker will submit the subsidy application, all original agreements, and the *Recommendation and Consent for the Transfer of Guardianship* form to the supervisor for review.
- Once the legal guardianship documents are approved by the supervisor, the legal guardianship documents are sent to the legal guardianship specialist for review and approval. Documents are to be sent via bsslegalguardianship@wv.gov.
- After the legal guardianship documents are approved by the legal guardianship specialist, the legal guardianship specialist will sign all the attached applications, agreements, and consents.

The legal guardianship specialist will send the signed documents back to the child welfare worker. The child welfare worker will upload all documents in CCWIS, enter the signature date in CCWIS and proceed to the court hearing process. All documents will be returned to the district office by the legal guardianship specialist within three business days. The legal guardianship subsidy approval is requested upon receiving court sanctioning, not the legal guardianship specialist's signature.

4.3 Child Financial Account

If the child has a special account for unearned benefits such as SSA or SSI, the child welfare worker will notify the financial clerk and the appropriate agency the transfer of guardianship has occurred and a new representative payee, typically the legal guardian, should be appointed. The child welfare worker must assure the closure of the child's client account. The balance of the account shall go to the new legal guardian to be used for the child once the placement reimbursement has been made.

4.4 Educational Assistance

When developing the *Legal Guardianship Subsidy Agreement*, the child's child welfare worker must specify the child's right to Education and Training Vouchers (ETV) to the degree that funding remains available at the time such assistance is needed. The ETV is for children who enter a legal guardianship at age 16 or older. A youth in legal guardianship may apply for the ETV assistance at any time prior to the youth's 23rd birthday. The ETV funding may continue until the youth's 26th birthday for those enrolled and making satisfactory progress up to the youth's 25th birthday. An application for ETV funds must include the youth's educational plan. The youth's guardianship child welfare worker will refer the youth to the Chafee Community Support Services Program.

SECTION 5 – CASE REVIEW

5.1 Court Review

As stated in Rule 39 of the Rules of Procedure for Child Abuse and Neglect Proceedings, the court shall conduct a permanent placement review conference at least once every three months, requiring the MDT to attend and report progress and development in the case. In this capacity, the MDT may be referred to as the permanent placement review committee, whose responsibility it is to monitor the implementation of the permanency plan for the child and report on the progress and developments in the case every three months until the child's permanent placement is achieved.

Until the legal guardianship is finalized, the child is still in foster care and the policies pertaining to court hearings and reviews must be followed. Refer to *Foster Care Policy* for further information.

Fostering Connections requires that in the child's case plan there be a description of the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted. The court will continue to hold quarterly status reviews and permanency hearings until permanency is

achieved. The court report will be submitted to the court at each hearing. During this review, any discussion of permanency planning for the child will include the appropriateness of reunification and adoption. The child's case plan developed by the agency, in consultation with the child's parent(s) and in kinship/relative guardianship cases, the child's relative, must also describe:

- The reasons why placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the child's best interest.
- The efforts made to discuss adoption with the child's relatives.
- Why adoption was not pursued.
- The efforts made to discuss the kinship guardianship with the child's parent or parents, or the reason why such efforts were not made. (§475(1)(F).

5.2 Court Action to Finalize Legal Guardianship

Within a child abuse and neglect proceeding, court action is necessary to transfer custody of the child from the department to the legal guardian by the court's appointment of guardianship. The prospective legal guardian's attorney will move the court to request the change in legal custody of the child and appointment of guardian(s). The child welfare worker must submit the following documents to the attorney for the prospective legal guardian for filing with the motion:

- A copy of the legal guardian's home study.
- A copy of the child's post-termination placement plan.
- Any termination of parental rights (TPR) documentation, if applicable.
- An original signed *Legal Guardianship Subsidy Agreement.*
- *Application for Subsidized Guardianship.*
- An original signed consent.

The child welfare worker will ensure the prospective legal guardian, the child, the child's birth parents (if TPR has not occurred), the legal guardianship specialist and the child's attorney are notified of the date and location of the hearing.

A hearing will be scheduled and the court will determine whether to grant the request for transfer of custody and appointment of guardianship. The child welfare worker and prospective legal guardians must attend the hearing. The child welfare worker will upload the certified copy of the court order to the CCWIS case file. After the finalization of the legal guardianship, the legal guardianship specialist will provide the legal guardians with one original signed agreement, a certified copy of the court order, and the child's original birth certificate.

After the legal guardianship is sanctioned by the court, the child welfare worker will enter the date of the court order on the legal guardianship screens and legal screens in CCWIS and request approval from the legal guardianship specialist. The legal guardianship specialist will then approve the request and CCWIS will automatically populate the court sanction date as the start date of the subsidy. The child welfare worker will complete all necessary recordings within five working days from the date the court hearing was held to facilitate timely federal reporting.

The legal guardian must provide the child welfare worker with all invoices or receipts to initiate payment for the one-time only non-recurring expenses related to the transfer of legal guardianship. The payments will be entered in CCWIS on the subsidized legal guardianship screen by the child welfare worker prior to requesting approval by the legal guardianship specialist.

Once the legal guardianship has been finalized, copies of the motion, final court order, subsidy agreement and any/all other documents relative to the finalization of the legal guardianship must be uploaded by the child welfare worker to document uploads for IV-E specialists to have access to the documents. There will need to be one copy of the packet. The child welfare worker is responsible for ensuring that one original subsidized legal guardianship packet is maintained in the hard file and uploaded to the electronic case record in CCWIS. The child welfare worker will e-file one copy of the packets with the court. The legal guardianship specialist will provide one copy to the legal guardian.

SECTION 6 – CASE CLOSURE

6.1 Records Management

After the establishment of legal guardianship, the child's state guardianship record, the family record and the legal guardian provider record will be maintained in the district office initiating the agreement. Family cases are closed if no child's case remains open. Upon finalization in CCWIS, the child's state guardianship case will automatically close. The provider record will remain open until the subsidy is closed. The paper file record shall be archived according to department record guidelines. The legal guardian specialist will notify the Child Welfare Placement Unit when to close the provider record.

6.2 Confidentiality

After the legal guardianship is finalized, the managed care organization (MCO) may contact the legal guardianship specialist to request information due to the files they receive not containing sufficient information for them to contact the member's new guardian. The legal guardianship specialist may provide to the MCO: the child's name, name of the new guardian, and contact information for the new guardian. Any additional information will have to be provided by the new guardian. Child welfare staff **nor** the legal guardianship specialist are to share an order of guardianship, date of guardianship, or otherwise acknowledge that the guardianship has been finalized.

6.3 Crime Victims Compensation Fund

A child or youth who is identified in a civil abuse and neglect case may be entitled to benefits from the Crime Victims Compensation Fund. Pursuant to W. Va. Code §49-5-101(c)(6), the department may share information with the West Virginia Crime Victims Compensation Fund to review allegations of injurious conduct committed against a child with child welfare involvement and, if appropriate, to make a determination for award of benefits to the victims.

For further information on when and how the Crime Victim's Compensation Fund should be utilized. (For additional information, see *Foster Care Policy* and W. Va. Code §14-2A-11a.

SECTION 7 – POST GUARDIANSHIP FINALIZATION

7.1 Yearly Subsidy Review

Once a child is in legal guardianship, the responsible legal guardianship specialist for the legal guardianship case will generate the *Legal Guardianship Subsidy Annual Review* sixty days to the child's birth date through CCWIS. The *Legal Guardianship Subsidy Annual Review* form contains the terms of the agreement, conditional services, and space to list the child's additional needs. This form will also document the child's school enrollment status. The review form will also serve to gather information for the continued eligibility for youth ages 18 to 21. The legal guardianship specialist will send this form to the legal guardian(s) as a self-declaratory review of eligibility and need for continued subsidy assistance. *The Legal Guardianship Subsidy Annual Review*, with instructions for completing the form and explaining the deadline for the return, is to be sent with the review form.

The legal guardian must notify the legal guardianship specialist of the following changes:

- The child is no longer the legal responsibility of the guardian.
- The child no longer requires assistance for the special needs for which the subsidy was being provided.
- There is a change of address of the guardian or the child; or
- The child is no longer attending school.

In the event that the legal guardian is no longer legally and financially responsible for the support of the child or if the child is no longer receiving any support from the legal guardian, the legal guardianship specialist will terminate the subsidy payment to the legal guardians for the following reasons:

The legal guardian must keep the department informed of circumstances which would make them ineligible for payments. (See sections 473(a)(4)(A)and (B) of the Social Security Act). If there is an overpayment of subsidy due to the legal guardian(s) not informing the department of circumstances which would make them ineligible for payments, the legal guardian(s) is required to return the overpayment to the department.

The *Legal Guardianship Subsidy Agreement* will terminate when the child attains the age of 18 or is otherwise legally emancipated through marriage or enlistment in military service, unless the youth meets one of the qualifications to continue the subsidy. Under no circumstances shall the *Legal Guardianship Subsidy Agreement* extend beyond the child's 21st birthday.

For a child with an active guardianship agreement, Title IV-E guardianship assistance payments may be extended up to the age of 21, if at ages 18, 19 and 20 the child meets one of the following criteria::

- Completing secondary education or a program leading to an equivalent credential.

- Enrolled in an institution which provides post-secondary or vocational education.
- Participating in a program or activity designed to promote, or remove barriers to, employment.
- Employed for at least 80 hours per month.
- Incapable of doing any of the above described activities due to a medical condition. (See section 475(8)(B)(iv) of the Social Security Act).

To continue the benefits past 18 years of age, the yearly review must be completed and returned. The legal guardianship specialist will review the form and will request from the guardian any additional information needed to verify eligibility. The legal guardian(s) will have 30 days from the date that the form is mailed to return any requested information. If the verification is not returned, or the child does not meet the requirements for continued eligibility, the legal guardians will be notified in writing that the subsidy is being terminated. The letter will also provide information on how to appeal the decision and the Fair Hearing process. The signed review form will be uploaded and saved in CCWIS.

7.2 Disruption of Legal Guardianship

As soon as the department becomes aware that a legal guardianship may be disrupted, it is imperative that a child welfare worker contacts the family to determine what, if anything, the department can do to preserve the legal guardianship placement. This may include referring the family to the assessment pathway. It is the child welfare worker's responsibility to assure the child's safety and well-being as well as establish a new permanency plan for the child if necessary.

Disruption - Child Placed in DoHS Custody

If the child is removed from a legal guardianship home or other permanent placement after the case has been dismissed from the court's docket, any party with notice thereof and the receiving agency shall promptly report the matter to the circuit court of origin, the department, and the child's counsel. The department shall convene a MDT meeting within thirty days of the receipt of notice of permanent placement disruption. The MDT meeting will take place in the county of origin.

If the child is placed into the custody of the department, the child welfare worker must make an appropriate placement for the child. The child welfare worker must document the removal and placement information in CCWIS. The child welfare worker must initiate the child's original MDT so the case plan for the child can be revised with a new permanency plan. The child welfare worker must notify the legal guardianship specialist via email at bsslegalguardianship@wv.gov that the child is no longer residing in the home. The email must include the date of exit and if the child is in the custody of the DoHS with a plan of reunification. If the plan is not reunification or the plan changes from reunification, the child welfare worker will notify the legal guardianship specialist that the subsidy end date needs to be amended for the date the permanency plan changed.

If the subsidy payment and medical card needs to be stopped, a disruption date must be entered by the legal guardian specialist in CCWIS only after the subsidy end date has been amended. The disruption date is the date the legal guardian is no longer providing care or assistance to the child.

If the guardian is seeking services in addition to placement of the child:

- The child welfare worker will enter A Request to Receive Services referral. ,
- The Request to Receive Services referral will be linked to a new case to open. It should never be linked to the state ward case or original family case.
- The child welfare worker will use the post-legal guardianship person ID if the case was a state ward case or the person ID in the child's original family case if it was a non-stateward legal guardianship.
- The child welfare worker will then provide services in a new case for the legal guardianship household.

Disruption – With a Successor Guardian

If the child's guardianship placement disrupts due to the guardian's death or inability to continue providing for the child, provided the guardian named a successor guardian at the time the agreement was signed, the child may move to reside with the successor guardian. Section 473(8)(c)(1) of the Social Security Act provides for the guardian to name a successor guardian so the care of the child will be ensured to continue as well as the subsidy and medical coverage for the child. For legal guardianship cases in which legal guardians named a successor guardian, the subsidy will follow the child. The successor guardian and all people in the home over age 18 must have a CPS/APS background check and a background check through WV CARES. The child welfare worker of the county of origin will ensure that the successor guardian enters into a new *Legal Guardianship Subsidy Agreement* and this agreement must be sanctioned by the court.

7.3 Legal Guardianship to Adoption

There are instances after a legal guardianship has finalized, the family and child decide they would like to pursue adoption. Legal guardians may file an adoption petition with the circuit court. The department must be involved in this court process and the adoption process will be followed. Refer to *Adoption Policy* for further information about the adoption process. The child welfare worker must notify the legal guardianship specialist when the legal guardians are pursuing adoption.

7.4 Youth in Legal Guardianship with a Child of Their Own

If a youth in foster care has an infant child of their own, the youth's infant child will receive a subsidy payment equal to the infant's tiered age bracket. It is not necessary for the infant child to be in state's custody to receive this subsidy. If the foster parent enters into a *Legal Guardianship Subsidy Agreement* for the minor parent, the minor parent's subsidy would be increased to cover care for the infant also. All parties need to be aware that the subsidy agreement is specific to the minor parent and the minor parent retains custody and control of the infant. The subsidy will end when the minor parent is no longer eligible.

If the infant child is removed from the custody of the birth parent, the child welfare worker will alert the legal guardianship specialist via email at bsslegalguardianship@wv.gov.

SECTION 8 NONDISCRIMINATION, GRIEVANCE PROCEDURE & DUE PROCESS STANDARDS, REASONABLE MODIFICATION POLICIES, AND CONFIDENTIALITY

8.1 Nondiscrimination

As a recipient of Federal financial assistance, the Bureau for Social Services (BSS) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of race, color, national origin, disability, age, sex, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BSS directly or through a contractor or any other entity with which BSS arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Social Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BSS will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BSS programs, services, and activities. For example, individuals with service animals are welcomed in the Department of Human Services, BSS**,** offices even where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BSS program, service, or activity, please contact:

Children and Adult Services
Section 504/ADA Coordinator
350 Capitol St. Rm 691
Charleston, WV 25301
(304) 352-4429

8.2 Non-Discriminatory Placement Protocol

The department ensures that all parties involved in child welfare programs have equal opportunities. All potential placement providers for children and youth, are afforded equal opportunities, free from discrimination and protected under the Americans with Disabilities Act (ADA). The department will not deny a potential placement provider the benefit of its services, programs, or activities due to a disability. Under the Americans with Disabilities Act it defines a person with a disability as:

> "An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment."

The ADA does not specifically name all the impairments that are covered. The ADA does not allow a person to be discriminated against due to a disability in employment, state and local government activities, public transportation accommodations, telecommunication relay services, fair housing, air carrier access, voting accessibility or education. Examples of disabilities include physical disabilities which require auxiliary aids and mental health issues. Those persons with substance use disorders, including opioid use disorder, currently participating in a treatment option such as Medication Assisted Treatment (MAT), are also covered by the ADA. Participation in a MAT program is not considered the illegal use of drugs. Qualifying MAT programs are defined in W. Va. Code §16-5Y-1, *et seq.* The ADA also addresses the civil rights of institutionalized people and architectural barriers that impact people with disabilities.

When making diligent efforts to locate and secure appropriate placement for foster children and youths, a worker cannot discriminate against a potential placement based upon a person with a disability according to the Americans with Disabilities Act (ADA) Title II. The department shall determine if the potential placement for the child represents a direct threat to the safety of the child. Safety threat decisions will be based on assessment of the individual and the needs of the child, as the safety of the child always remains at the forefront of the determination of the best interest of a child, when placing a child in anyone's home. This determination cannot be based on generalizations or stereotypes of individuals.

If a provider protected under the ADA is identified as an appropriate and best interest placement for a foster child they may, at some point, require services specific to their disability in order to preserve the placement. In such situations, consideration for services must be given if it is in the best interest of the child to preserve the placement. Any specific auxiliary aids or services should be determined by the worker at no cost to the provider and should be considered on a case-by-case basis.

8.3 Complaint Procedure and Due Process Standards

A: Complaints Based on Disability or other Forms of Discrimination

It is the policy of the State of West Virginia Department of Human Services (DoHS), not to discriminate on the basis of race, color, national origin, disability, age, sex, religion, or creed. DoHS has adopted an internal complaint procedure providing for prompt, equitable resolution of complaints alleging discrimination. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by visiting https://www.ada.gov/reg3a.html. Additional laws and regulations protecting individuals from discrimination in child welfare programs and activities may be examined by visiting the U.S Department of Health and Human Services website at https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, disability, age, sex, religion, or creed may file a complaint under this procedure. It is against the law for the Bureau for Social Services (including employees, contracted providers or other BSS representatives) to retaliate in any way against anyone who files a complaint or cooperates in the investigation of a complaint.

Procedure

Complaints due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer within 90 calendar days of the date the person filing the complaint becomes aware of the alleged discriminatory action.

The complainant may make a complaint in person, by telephone, by mail, or by email. To file the complaint by mail or email, a Civil Rights Discrimination Complaint Form, IG-CR-3 (See Appendix A) must be completed and mailed or emailed to the West Virginia Office of Shared Administration, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301 or email at OSACivilRights@WV.Gov. If the complainant requires assistance completing the IG-CR-3 form, they may request assistance from the department. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought. The complainant may also contact the WV DoHS, EEO/Civil Rights Officer, for more information.

West Virginia Office of Shared Administration
Office of Human Resource Management
EEO/Civil Rights Officer
(304) 558-3313 (voice)
(304) 558-6051 (fax)
OSACivilRights@WV.Gov (email)

The EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence

relevant to the complaint. The EEO/Civil Rights Officer will maintain the files and records of Bureau for Social Services relating to such complaints. To the extent possible, and in accordance with applicable law, the EEO/Civil Rights Officer will take appropriate steps to preserve the confidentiality of files and records relating to complaints and will share them only with those who have a need to know.

The EEO/Civil Rights Officer shall issue a written decision on the complaint, based on the preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of his or her right to pursue further administrative or legal remedies. If the EEO/Civil Rights Officer documents exigent circumstances requiring additional time to issue a decision, the EEO/Civil Rights Officer will notify the complainant and advise them of his or her right to pursue further administrative or legal remedies at that time while the decision is pending. The person filing the complaint may appeal the decision of the EEO/Civil Rights Officer by writing to the Director of Human Resources within fifteen (15) calendar days of receiving the EEO/Civil Rights Officer's decision. The Director of Human Resources shall issue a written decision in response to the appeal no later thirty (30) calendar days after its filing.

The person filing the complaint retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the State of West Virginia Department of Human Services.

The availability and use of this procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, disability, age, sex, religion or creed in Court or with the US Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint portal at: https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf or by mail or by phone at:

U.S. Department of Health & Human Services
Office for Civil Rights
200 Independence Ave., S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201
800-368-1019 (voice) 800-537-7697 (TDD)
OCRComplaint@hhs.gov

For complaints to the Office for Civil Rights, complaint forms are available at: https://www.hhs.gov/ocr/complaints/index.html. Complaints shall be filed within one hundred and eighty (180) calendar days of the date of the alleged discrimination.

The Bureau for Social Services will make appropriate arrangements to ensure that individuals with disabilities and individuals with Limited English Proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed, to participate in this process. Such arrangements

may include, but are not limited to, providing qualified interpreters, providing recorded material for individuals with low vision, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

B: Grievances Regarding the Child Welfare Worker or Casework Process

At any time that the Bureau for Social Services is involved with a client, the client (adult or child), or the counsel for the child has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a parent, child or counsel for the parent or child has a complaint about Legal Guardianship or expresses dissatisfaction with Legal Guardianship the worker will:

- Explain to the client the reasons for the action taken or the position of the BSS which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client his/her right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records, and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies, and guidelines for practice.
- Meet with the client.
- If the problem cannot be resolved, provide the client with the form “Client and Provider Hearing Request”, SS-28.
- Assist the client with completing the SS-28, if requested.
- Submit the form immediately to the Chairman, State Board of Review, DoHS, Building 6, Capitol Complex, Charleston, WV 25305.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see W.Va. Code §29A-5-1.

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

8.4 Reasonable Modification Policy

A: Purpose

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Social Services shall not discriminate against qualified individuals with disabilities on the basis of disability in its services,

programs, or activities. The BSS shall make reasonable modifications in Legal Guardianship program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

B: Policy

DoHS is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the BSS Legal Guardianship program.

The Bureau for Social Services will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Social Services is prohibited from making Legal Guardianship program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BSS will conduct individualized assessments of qualified individuals with disabilities before making Legal Guardianship application and retention decisions.
The Bureau for Social Services may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BSS will confidentially maintain the medical records or other health information of Legal Guardianship program applicants and participants.

The Bureau for Social Services upon request, will make reasonable modifications for qualified Legal Guardianship program applicants or participants with disabilities unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Individuals do not need to reference Section 504 or Title II or use terms of art such as “reasonable modification” in order to make a request. Further, BSS staff are obligated to offer such reasonable accommodations upon the identification of a qualifying disability or to an individual with Limited English Proficiency.

BSS must consider, on a case-by-case basis, individual requests for reasonable modifications in its Legal Guardianship program, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced foster/adoptive parent, note takers, and other auxiliary aids and services. When auxiliary aids or language interpretation services to ensure effective communication for individuals with hearing, vision, speech impairments, or Limited English Proficiency (LEP) are needed, they shall be provided to the participant at no additional costs. DoHS evaluates individuals on a case-by-case basis to provide auxiliary aids and services as necessary to obtain effective communication. This would include but not be limited to:

- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments.
- And qualified readers, taped texts, and Brailed or large print materials for individuals with vision impairments.
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:
Center for Excellence in Disabilities (CED)
959 Hartman Run Road
Morgantown, WV 26505
Phone: 304-293-4692.
Toll Free: (888) 829-9426
TTY: (800) 518- 1448

For language translation and interpretation services Child Welfare Workers may Contact 911 Interpreters or the Section 504/ADA Coordinator (see also section 11.5 Limited English Proficiency). To contact 911 Interpreters, utilize the information below:

911 Interpreters Inc.
1-855-670-2500
BSS Code: 16233

When requesting language translation services directly through 911 Interpreters, staff must report the accommodation to the Section 504/ADA Coordinator by completing the *Reasonable Accommodation Reporting Form*.

The Bureau for Social Services will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Social Services Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

Children and Adult Services
Section 504/ADA Coordinator
350 Capitol St. Rm 691
Charleston, WV 25301
(304) 352-4429
OSACivilRights@WV.Gov (email)

Staff who make reasonable accommodations for an individual must be reported to the Section 504/ADA Coordinator utilizing the *Reasonable Accommodation Reporting Form*.

8.5 Limited English Proficiency

The Bureau for Social Services (BSS) will take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in our services, activities, programs, and other benefits. The policy of BSS is to ensure meaningful communication with LEP clients and their authorized representatives involving their case. The policy also provides for communication of information contained in vital documents, including but not limited to, information release consents, service plans, etc. All interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served, and clients and their families will be informed of the availability of such assistance free of charge. Language assistance will be provided through use of contracted vendors, technology, or telephonic interpretation services. All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in the effective use of an interpreter and the effective use of technology including telephonic interpretation services. The Bureau for Social Services will conduct a regular review of the language access needs of our population, as well as update and monitor the implementation of this policy and these procedures, as necessary.

PROCEDURES:

1. IDENTIFYING LEP PERSONS AND THEIR LANGUAGE

The Bureau for Social Services will promptly identify the language and communication needs of the LEP person. If necessary, staff will use a language identification card (or "I speak cards," available online at www.lep.gov or posters to determine the language. In addition, when records are kept of past interactions with clients or family members, the language used to communicate with the LEP person will be included as part of the record.

2. OBTAINING A QUALIFIED INTERPRETER

911 Interpreters Inc. has agreed to provide qualified interpreter services. The agency's telephone number is 1-855-670-2500 (BSS Code: 16233). Interpretation services are available 24 hours a day. Some LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and **after** the LEP person has understood that an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the person's file. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, BSS will provide qualified interpreter services to the LEP person free of charge. Children and other clients will **not** be used to interpret, in order to ensure confidentiality of information and accurate communication.

3. PROVIDING WRITTEN TRANSLATIONS

When translation of vital documents is needed, BSS will submit documents for translation to 911 Translators Inc. or the Section 504/ADA Coordinator**.** BSS will generally provide language services in accordance with the following guidelines:

(a) BSS will provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent threshold in (a), BSS will not translate vital written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Additionally, when making a determination as to what languages services will provided, BSS may consider the following factors: (1) the number and or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

4. PROVIDING NOTICE TO LEP PERSONS

The Bureau for Social Services will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. At a minimum, notices and signs will be posted and provided in DoHS office lobbies and waiting areas. Notification will also be provided through one or more of the following: outreach documents and program brochures.

5. MONITORING LANGUAGE NEEDS AND IMPLEMENTATION

On an ongoing basis, BSS will assess changes in demographics, types of services or other needs that may require reevaluation of this policy and its procedures. In addition, BSS will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment used for the delivery of language assistance, complaints filed by LEP persons, feedback from clients and community organizations, etc.

APPENDIX A - DoHS CIVIL RIGHTS COMPLAINT FORM

WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES

STATE OF WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES
BUREAU FOR SOCIAL SERVICES

Civil Rights Discrimination Complaint Form

Complainant First Name		**Complainant Last Name**
Home Phone *(include area code)*		**Work Phone** *(include area code)*
Street Address		**City**
State	**Zip Code**	**Email** *(if available)*

Is this complaint being completed by someone other than the complainant? ☐ Yes ☐ No

First Name	**Last Name**	**Telephone Number** *(include area code)*

If yes, please provide your information below:The complainant feels they have been discriminated against on the basis of:

☐ Race/Color/National Origin ☐ Religion/Creed ☐ Disability ☐ Age ☐ Sex

☐ Other *(please specify):*

Who or what bureau within the State of West Virginia Department of Human Services is believed to have been discriminatory?

Name/Bureau/Office		
Street Address	**City**	**County**
Zip Code	**Telephone**	

Date(s) discriminatory action is believed to have occurred:

Which program(s) is the complainant alleging the discriminatory action took place in?

☐ Child Welfare *(includes CPS, Youth Services, Foster Care, Adoption, Homefinding, and Legal Guardianship)*

☐ Adult Welfare *(includes APS, Guardianship, Health Care Surrogate, Residential Services Request to Receive and Request to Provide)*

☐ Low Income Energy Assistance Program (LIEAP)

☐ Temporary Assistance for Needy Families (TANF)

☐ School Clothing Voucher

☐ Indigent Burial

STATE OF WEST VIRGINIA
DEPARTMENT OF HUMAN SERVICES
BUREAU FOR SOCIAL SERVICES

Complaints involving the Supplemental Nutrition Assistance Program (SNAP) must be sent directly to the U.S. Department of Agriculture. See below for more information

Describe briefly what happened. How and why does the complainant believe they have been discriminated against? What is the relief or remedy sought by the complainant?

(*Attach additional pages as needed.)*

Please sign and date this form. If submitting by email, you may type your name and date. Your email will represent your signature.

Signature	Date*(mm/dd/yyyy)*

The State of West Virginia Department of Human Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. EEO/Civil Rights Officer will maintain the files and records of the department relating to such grievances. The EEO/Civil Rights Officer shall issue a written decision on the complaint no later than thirty (30) calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision. To submit this complaint or request additional information, please contact:

West Virginia Office Of Shared Administration
Office of Human Resources Management
EEO/Civil Rights Officer
One Davis Square, Suite 400, Charleston, WV 25301
OSACivilRights@WV.Gov

The person filing the grievance retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the State of West Virginia Department of Human Services. The availability and use of this grievance procedure does not prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of being a member of a protected class, with the:

U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Room 509F HHS Bldg.

Washington, D.C. 20201
800-368-1019 (voice)
202-619-3818 (fax)
800-537-7697 (TDD)
OCRComplaint@hhs.gov (email)
The complaint form may be found at https://www.hhs.gov/ocr/complaints/index.html

For SNAP complaints, please contact the U.S. Department of Agriculture.
The USDA Program Discrimination Complaint Form, can be found online at: https://www.ocio.usda.gov/document/ad-3027, or at any USDA office. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form by mail, email, or fax to:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW Washington, D.C. 20250-9410
(866) 632-9992(telephone(
(202) 690-7442 (fax)
program.intake@usda.gov (email)