



Promoting Normalcy for Children and Youth in Foster Care

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DEDICATION

We dedicate this paper to the youth advocates from Youth Fostering Change, the Pennsylvania Youth Advisory Board, and to all youth in care. We hope this paper furthers advocacy and reform work that will create a child welfare system that is age-appropriate, trauma-informed, and guided by youths' voice; and which supports youths' talents and strengths and works to connect them with family and community.

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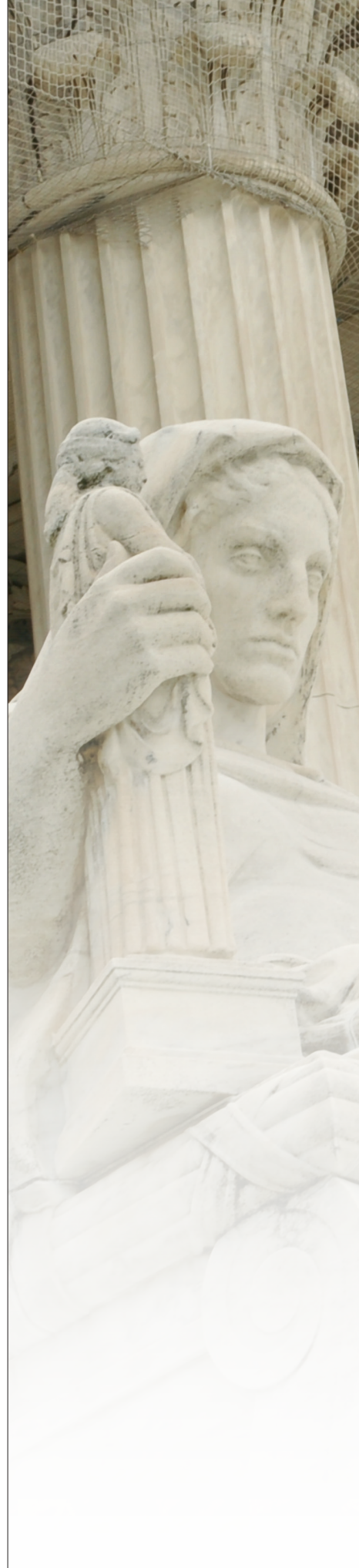
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EXECUTIVE SUMMARY

Many of us recall doing the “typical” things during our teenage years: going to a friend’s house, taking a school trip, working an after-school job, joining a club, dating, attending the prom, and learning to drive. While we may take them for granted, these “normal” experiences help youth develop interests, acquire skills, and build lasting, supportive relationships. But because of real and perceived constraints, foster youth are often denied the chance to participate in the everyday activities essential for their successful transition to adulthood. Consequently, youth who “age out” of the foster care system experience worse life outcomes than their peers, including homelessness, unemployment, and poverty.

The Preventing Sex Trafficking and Strengthening Families Act of 2014 is a groundbreaking federal law designed to promote well-being and normalcy for youth in foster care.¹ The Act directs state child welfare agencies, contracted providers, and courts to facilitate age-appropriate experiences for these youth and take other steps to support normalcy and promote permanency. In the area of normalcy, the Act specifically requires states to:

- Ensure that children who are most likely to remain in foster care until age 18 years of age engage in age- or developmentally-appropriate activities.
- Institute the reasonable and prudent parent standard for youth participation in activities.
- Develop standards and training on the reasonable and prudent parent standard for foster parents and caregivers.
- Implement contract requirements so that child care institutions always have an individual onsite who is designated to exercise the reasonable and prudent parent standard.
- Institute liability protections that ensure protection when the reasonable and prudent parent standard is applied by foster parents.
- Mandate judicial review of normalcy for youth who have a permanency goal of Another Planned Permanent Living Arrangement (APPLA).
- Require participation of youth age 14 and older in case planning and identification of advisors/advocates.
- Mandate provision of a list of rights to youth age 14 and older.
- Mandate inclusion of youth age 14 and older in transition planning for a successful adulthood.

States are required to implement many of the Act’s provisions by September 29, 2015 in order to remain in compliance with the requirements of Title IV-E of the Social Security Act.²

Prior to its passage, several states already had implemented policies and practices aligned with the new federal law's provisions. The experiences in these jurisdictions, and best practice in working with older youth, inform the core components of an effective normalcy law. This white paper recommends that states enact legislation and regulation that:

- 1. provides a right for children in foster care to engage in age- or developmentally-appropriate activities, and an affirmative obligation on the child welfare agency to provide these opportunities.**
- 2. enforces normalcy provisions by requiring a) inclusion of age-appropriate activities in each child's case plan, b) judicial oversight, and c) youth-friendly grievance procedures.**
- 3. supplies youth with a document describing their rights under federal and state law and youth-friendly grievance procedures.**
- 4. clarifies that providing normalcy to youth in foster care does not alter the legal rights of biological parents.**
- 5. ensures meaningful implementation of normalcy provisions in all congregate settings, including the appointment of a "caregiver" as a contract condition.**
- 6. codifies the reasonable and prudent parent standard and clarifies the scope of decision-making authority and considerations for decision making.**
- 7. requires training and guidance for caregivers, public private child welfare agency staff, the judiciary, and attorneys on the reasonable and prudent parent standard.**
- 8. affords protections from liability to foster parents and caregivers who follow the reasonable and prudent parent standard.**

Implementation of the new law's normalcy provisions is only one step toward a larger goal of creating a child welfare system that is more developmentally appropriate; such a system is trauma informed, and responsive to the needs and voices of youth and emerging adults. Normalcy is truly achieved when children and youth learn skills, take advantage of opportunities, and develop relationships while growing up in a stable, loving family and a supportive community. Thus, the child welfare system as a whole must re-double its efforts to find permanency within families for all foster youth, including older youth in care.

INTRODUCTION

Many of us recall doing the “typical” things during our teenage years: going to a friend’s house, taking a school trip, working an after-school job, joining a club, dating, attending the prom, and learning to drive. While we may take them for granted, these “normal” experiences help youth develop interests, acquire skills, and build lasting, supportive relationships. Most youth make the transition to adulthood in the safe space of the family, where parents gradually expose them to new situations and challenges so that they learn how to manage increasing independence and responsibilities.³

But because of real and perceived constraints, these critical growth opportunities are unavailable to many youth in the child welfare system. Youth placed in out-of-home care are often denied the chance to participate in the everyday activities essential to the process of maturing into adults. Consequently, youth who “age out” of the foster care system experience worse life outcomes than their peers, including homelessness, unemployment, and poverty.⁴ There is a growing consensus that child welfare agencies and caregivers need to facilitate age-appropriate experiences for youth in foster care⁵ so that they can achieve the key markers of child and adolescent development. Agencies and caregivers must fully commit to providing “normalcy” to youth in care.

A recently-enacted federal statute creates the opportunity for state child welfare systems to do just that. Signed into law on September 29, 2014, P.L. 113-183—the Preventing Sex Trafficking and Strengthening Families Act, was unanimously passed by the House and Senate. Among the law’s important provisions is the section “Supporting Normalcy for Children in Foster Care.”⁶ The “Supporting Normalcy” section directs states to promote foster youth participation in age-appropriate activities, and to institute the reasonable and prudent parent standard for substitute caregivers to consent to such participation.⁷ The law also promotes “normalcy” by expanding the existing obligation to include youth in case planning, restricting the use of Another Planned Permanent Living Arrangement (APPLA) as a permanency plan, and requiring courts to play an active role in ensuring that youth experience normalcy.⁸

States may implement the new federal law in a number of ways. This white paper urges states to opt for a comprehensive implementation of the federal provisions, because promoting normalcy is critical to improving permanency and well-being for foster youth. Prior to its passage, several states had already implemented policies and practices aligned with the new federal law’s provisions. The experiences in these jurisdictions, and best practice in working with older youth, inform this paper’s recommendation that all states fully embrace the options outlined in the federal law. This paper recommends that states embed the requirements of the new law in statute and regulation to maximize its impact on policy and practice and to ensure clear avenues for accountability and enforcement.

This paper is divided into three parts. Part I defines and explores the concept of normalcy, its importance to youth in foster care, and the various real and social costs of not providing developmentally-appropriate opportunities to these youth. Part II lays out the rationale and requirements of the new federal law. Part III discusses successful state implementation of similar provisions that pre-date the federal law. The experiences in these states and their resulting policies can be used as models by other jurisdictions. Finally, Part III then presents a plan of action for states, including guidance on implementing the core components of the new federal mandate. Together, these components and other provisions of the new law will prompt significant changes in expectations and practice in each state’s child welfare system.

PART I

NORMALCY: WHAT IS IT AND WHY DOES IT MATTER FOR FOSTER CHILDREN AND YOUTH?

*Promoting Normalcy
for Children and Youth
in Foster Care*

A. Normalcy, Permanency and Well-Being

While there is no single “normal” childhood experience, “normalcy” refers to age- and developmentally-appropriate activities and experiences that allow children and youth⁹ to grow. Indeed, normalcy for youth means being able to do what is considered “routine” for many teenagers: participate in sports, teams, and clubs; attend choir and dance classes; volunteer; and spend time with friends, have sleep overs, and take trips. It also includes opportunities for youth to take on additional responsibilities and freedoms – such as learning how to drive, working a part-time job, or having a later curfew – as the youth approaches adulthood. Through these activities, youth learn their interests and talents, safely experiment and take risks, practice decision-making skills, and develop healthy peer and adult relationships.

Adolescent brain research further confirms why these experiences and relationships are so critical to a youth’s maturation. Brain development during adolescence is as important as that which takes place in early childhood.¹⁰ Physiological development occurs in the adolescent brain’s frontal lobes, particularly in the prefrontal cortex, which governs reasoning, planning, decision making, judgment, and impulse control.¹¹ Chemicals in the brain shift during this developmental period, providing youth with the capacity needed to try out adult roles and responsibilities.¹² At the same, youth are excited, may undergo mood swings, and want to explore new experiences and try out their independence.¹³

Adolescent risk taking is normal and healthy. Adults play the crucial role of providing the appropriate amount of supervision and boundaries, thus allowing youth to make and learn from their mistakes in a safe environment. Adult support during this cognitive, social, and emotional developmental process allows youth to transition into a healthy, productive adulthood.¹⁴ Such support can come not only from parents but from mentors, school teachers, employers, and adults working in social, recreational, community, and faith-based organizations.

Foster youth undergo the same development changes as all adolescents. Unfortunately, many do not have a family or other adults to provide them with the guidance and safety to assist them during this critical developmental stage. In addition, many youth in foster care do not have the opportunity to build social capital. Social capital is the “value that is created by investing in relationships with others through processes of trust and reciprocity.”¹⁵ Typically, adolescents will cultivate social capital by building social networks and relationships within the family, school, extracurricular groups (including religious communities, clubs and sports), and informal communities of friends.¹⁶ Building social capital creates support networks for youth that can lead to lifelong connections, resources, and opportunities such as a job or internship. Foster youth have comparatively low access to resources, fewer familial and community bonds, and experiences with loss, separation and disruption that may lead them to be distrustful of others.¹⁷ These youth need “normalcy” so that they can build their social capital.¹⁸

Providing youth the opportunity to develop healthy and supportive relationships through community and other activities improves foster youths’ chances for permanency. Coaches, church members, and individuals from the community are invaluable permanency resources. Normalizing the activities and opportunities of youth greatly expands the web of support youth can draw on. Correspondingly, prioritizing the development of connections for youth in care can improve their resilience and competency in many areas: “A qualitative synthesis of over 100 resiliency-related studies revealed that resilient children tend to have the following

Part I

factors, all of which are related to social connection: good social skills and support from mentors or peers; a close connection to family; and a caring relationship with a caregiver. The [benefit of] connectedness . . . also shows up in the growing body of research on adolescents.”¹⁹

B. Barriers to Normalcy

Healthy risk taking is part of growing up. As youth become teenagers and gain more independence, they engage in pursuits that are inherently riskier than the daily activities of younger children. Learning to drive a car or going out for the football team is riskier than, for example, playing on the see-saw or swings at the playground. But barring teenagers from participating in “typical” activities prevents them from developing the skills and relationships critical to successfully transitioning to adulthood. Thus, most families allow teenagers to gain such experiences in a safe environment; they provide some supervision and set boundaries to minimize unnecessary risk while allowing the youth to grow. Making and learning from mistakes is an important part of this process.

Child welfare agencies, like most governmental entities, are risk-averse. The three main objectives of the child welfare system are to provide children and youth with safety, well-being, and permanency. In policy and daily practice, child welfare agencies place safety concerns above all others; they often unintentionally or unnecessarily sacrifice normalcy and, consequently, well-being and permanency. Ensuring safety must remain a priority for child welfare agencies when working with older youth. Safety must be considered in an age- and developmentally-appropriate context, and a youth’s perception of safety must be given great weight. The challenge is to prevent safety from dominating policy and practice to the exclusion of facilitating normalcy and, thus, well-being and permanency for these youth. This is not a simple task; it involves discussion, and good planning and decision making.

Fears that youth will get hurt – and that agencies and individuals will be held liable – have shaped the policies of many child welfare systems. The result is that foster youth often must navigate through multiple levels of permission, authorization, and even court hearings to do the things that most parents routinely allow their teenagers to do. Foster youth often must obtain a court order to join a soccer team, go on a school trip, or get a driver’s license. Some states require a burdensome background check, including fingerprinting and child abuse and criminal clearances, before a foster youth may spend the night at a friend’s house or go on a camping trip.²⁰

Caregivers and foster parents are rarely given the authority to make these day-to-day decisions; when they are given some authority, its scope is often unclear. These individuals are often in the best position to determine the appropriateness of a given activity based on their knowledge of the child and prior parenting experience. But rather than feeling supported in their decision making, many skilled foster parents and caregivers fear both liability and punishment from the agency for allowing their foster children to participate in the same activities as their own children.²¹ Committed foster parents and caregivers want and need more training and support from the child welfare system to make reasoned and appropriate decisions about a youth placed in their care.

The reality is that kids do get hurt doing even run-of-the-mill activities, and even when all precautions are taken. Parents, grandparents, and caregivers live with and manage these risks every day. They do so by being knowledgeable, responsible decision makers who are prepared to address accidents or problems should they arise. An agency and system charged with caring for dependent children must rise to the same standard. All risk cannot be avoided, but it can be limited and managed

efficiently without sacrificing a youth's well-being and experience of normalcy. "The fear of harm must be balanced by the fact that every child needs to have play and activities as part of their lives...All this and so much more would be lost if we continued to keep children 'safe' and inactive."²²

C. The Costs of Not Providing Normalcy

Foster youth report feeling different from their peers and socially excluded when they cannot take part in "typical" youth activities. Lengthy approval processes stigmatize foster youth and often prevent them from doing the everyday activities that non-foster youth can do.²³ Child welfare agencies that facilitate normalcy avoid inflicting further social and emotional harm on foster youth during their formative years.

The value of normalcy also goes beyond improving foster youth's daily quality of life. It affects their long-term life chances. Normalcy allows foster youth to build supportive relationships and learn valuable skills, thus giving them a meaningful chance to achieve well-being and permanency. Youth who cannot participate in age-appropriate activities and are placed in overly restrictive environments do not develop the skills they need to navigate the adult world. These critical skills include how to identify and maintain healthy relationships, and avoid those that are unhealthy or dangerous. They also include how to find and maintain a job.

Another developmental "task" of adolescence is to begin exercising some control and making decisions so that one can eventually take leadership of his or her own life. Youth become able decision makers when caring adults and caregivers are equipped to help them learn from their experiences and mistakes. Unfortunately, youth in the child welfare system are frequently left out of decision making about critical issues: with whom they will live, where they will go to school, which relatives and friends they will see, where they will get counseling. In some cases, youths' frustration leads them to run away when they are under 18, or discharge from care at age 18 even when they are not ready to be on their own. These youth are at particularly high risk for ending up in unsafe situations and experiencing poor outcomes.²⁴

Indeed, many foster youth who age out of the foster care system find themselves suddenly without the family support or life skills that help youth thrive.²⁵ This comes at a high social cost. These youth struggle with transitioning to adulthood and throughout their lives: they are at high risk of becoming homeless after turning 18 and are less likely than other youth to graduate high school, go to college, or get a job.²⁶ The Jim Casey Youth Opportunities estimates that "for every youth who ages out of the system, taxpayers and communities pay \$300,000 in social costs over that person's lifetime."²⁷

Compounding the problem is the fact that the number of youth who "age out" of the system – that is, who exit foster care without a permanent family at age 18 or older – is increasing. While the total number of children in foster care has decreased over the years (from roughly 459,828 in 1998²⁸ to 397,091 in 2012²⁹), in 2012 alone, more than 23,000 youth aged out of the system.³⁰ In addition, the percentage of exits due to aging out has increased, from 7 percent in 2000 to 10 percent in 2012.³¹ Promoting normalcy has the potential to improve this trend in two ways: it can increase the opportunities to achieve permanency as well as improve a youth's readiness to leave the system as a young adult who is prepared for adulthood and connected to supportive adults.

PART II

NEW FEDERAL LAW SUPPORTING NORMALCY FOR CHILDREN AND YOUTH IN FOSTER CARE

The Preventing Sex Trafficking and Strengthening Families Act's (the "Act") groundbreaking provisions will improve outcomes for foster youth. The Act tracks the child welfare system's three objectives: safety, well-being, and permanency. Subtitle A of Title I, *Identifying and Protecting Children and Youth at Risk of Sex Trafficking*, contains several requirements to improve the identification of foster youth who are, or are at risk of, being trafficked, and to better meet their needs. The provisions in Subtitle B of Title I, *Improving Opportunities for Children in Foster Care and Supporting Permanency*, aim at reducing the use of Another Planned Permanent Living Arrangement (APPLA) and promoting permanency for older youth. Subtitle C of Title I creates a National Advisory Committee on Sex Trafficking. Title II of the law improves adoption incentives and extends Family Connection Grants.³²

States are required to implement many of the Act's provisions by September 29, 2015 in order to remain in compliance with the requirements of Title IV-E of the Social Security Act.³³ However, the U.S. Department of Health and Human Services (HHS) may approve delays in implementation in some situations if state legislation is required.³⁴

This part focuses on provisions that most directly promote and in some cases mandate normalcy.³⁵ Many of these provisions are found in Section 111 of Subtitle B of Title I, although Sections 112³⁶ and 113 also contain key requirements.

The Act specifically requires states to take the following actions:³⁷

- **Promote participation in age-appropriate activities** by ensuring that "children who are most likely to remain in foster care until age 18 have regular and ongoing opportunities to engage in age- or developmentally-appropriate activities."³⁸
- **Institute the reasonable and prudent parent standard** for participation in age- or developmentally-appropriate extracurricular, enrichment, cultural, and social activities.³⁹
- **Develop standards and training on the reasonable and prudent parent standard for foster parents and caregivers.**⁴⁰ The state authority responsible for establishing and maintaining standards for foster family homes, child care institutions, and other placement types must develop the standards.
- **Implement contract requirements mandating the designation of a caregiver** for all child care institutions that contract with the child welfare agency, so that there is always at least one onsite official at the institution who is designated to exercise the reasonable and prudent parent standard.
- **Institute liability protections that ensure protection when the reasonable and prudent parent standard is applied by** foster parents and child care institutions that contract with the state.⁴¹
- **Mandate judicial review of normalcy for youth who have a permanency goal of Another Planned Permanent Living Arrangement (APPLA).** At each permanency review hearing, the judge must ensure the child's case plan specifies the steps the agency is taking to ensure that the reasonable and prudent parent standard is being followed, and that the child has regular, ongoing opportunities to engage in age- or developmentally-appropriate activities.⁴²

- **Require youth participation in case planning and identification of advisors/advocates.** Youth ages 14 and older must participate in developing their own case plans and be allowed to select up to two individuals (who are not a foster parent or caregiver) to participate in the plan development. “One of the individuals may be designated to be the child’s advisor and advocate with respect to the application of the reasonable and prudent parent standard.”⁴³
- **Mandate provision of a list of rights to youth age 14 and older.** Youth must receive a document describing their rights with respect to education, health care, visitation, and court participation, including their right to receive the vital documents and records listed in the new law. They must also be provided with information about how to stay safe and avoid exploitation. This material must be conveyed in youth-friendly language and its receipt documented in the youth’s case plan.⁴⁴
- **Mandate inclusion of youth age 14 and older in transition planning for a successful adulthood.** The Act also renames “independent living planning” so that it is now called “transition planning for a successful adulthood.”

PART III

STATE IMPLEMENTATION OF FEDERAL NORMALCY PROVISIONS

A. Implementation Strategies: Statute, Regulation, or Policy?

The new Act does not direct states to follow a particular method for achieving compliance, i.e., whether the requirements should be imbedded in statutes, regulations or policy directives. Prior to the Act's enactment, several states already had enacted laws, regulations or policies that mirror the Act's normalcy requirements. California, Florida, Washington, Utah, and Ohio have taken the lead in passing laws that promote normalcy. Based on our review of various states' experiences, it is our assessment that legislation with clear notification and enforcement mechanisms is preferable to policy creation or revision to implement the new Act.

For example, some states have enacted – either through legislation or regulations – “Bill of Rights” that provide foster youth opportunities for normalcy, including participation in age-appropriate activities.⁴⁵ However, these Bills of Rights typically do not create enforceable rights or specify any means for their enforcement. Anecdotal evidence also suggests that many youth are not aware of these Bills of Rights. To be more than rhetorical or symbolic tools for promoting normalcy, a Bill of Rights must include notification provisions and youth-friendly mechanisms for enforcement.⁴⁶

Some state child welfare agencies have created promising policy guidance for caregivers and social workers aimed at promoting normalcy. However, this guidance often falls short because it does not provide clear standards or enforcement mechanisms. For example, policies in Arkansas and Colorado “encourage” or require a “reasonable effort” at providing normalcy, but lack any means to ensure enforcement or accountability. The manual for Arkansas's Division of Children and Family Services (DCFS) notes that “[c]hildren in foster homes should be encouraged to participate in normal age-appropriate activities such as overnight visits with friends, extra-curricular activities, church activities, and short-term summer camps.”⁴⁷ Foster parents are advised to use care in determining the individual child's maturity when making these decisions.⁴⁸ Likewise, Colorado requires foster parents and group home administrators to “make a reasonable effort” to allow youth to participate in “extracurricular, cultural, educational, work-related, and personal enrichment activities.”⁴⁹ To be sure, such guidance is an important step to changing practices and setting expectations. In fact, many states provide no guidance to caregivers. At the same time, it is difficult to determine whether youth and caregivers are benefitting from these policies and how the policies can be enforced when they are not being carried out.

Florida's experience demonstrates why normalcy for foster youth is best achieved through statutory change with enforcement methods as opposed to promulgation of internal child welfare policy without more. Florida's 2013 normalcy law – The Quality Parenting for Children in Foster Care Act⁵⁰ – was not Florida's first attempt at promoting normalcy for foster youth. For several years prior to the law's passage, the Florida Department of Children and Families (DCF) had tried unsuccessfully to encourage flexibility and normalcy for older youth in care. DCF policy stated that children in care were to “be afforded every opportunity for social development, recreation, and normalization of their lives,” and caregivers were supposed to make “prudent and conscientious decisions” about children's activities.⁵¹ Background checks were not required for dating and outings such as field trips, Cub Scout campouts, and activities with friends, families, school, and church groups.⁵² In 2005, the DCF Deputy Secretary released a memorandum encouraging agencies

and caregivers to help youth participate in extracurricular activities, learn to drive, travel, socialize, and have normal life experiences.⁵³

However, the Florida Center for Child Welfare reported in 2007 and 2008 that agencies were unaware of the guidelines and caseworkers were failing to develop normalcy plans with their assigned youth.⁵⁴ In 2012, the Secretary of DCF released another memo proposing that the agency “fully and completely support the efforts of caregivers, providers, and CBCs [community based care] to ensure that children in our care have the opportunity to fully participate.”⁵⁵ Despite these pre-2013 efforts, youth continued to report difficulty achieving normalcy.⁵⁶ Foster parents “completely ignored the memos,” said a leading Florida advocate. “DCF could send memos allowing children to have normal lives, but the caregivers were worried about their liability and licensure.”⁵⁷

Thus, it became clear that legislation was needed to establish and clarify duties, and create oversight and enforcement mechanisms. Enacted in 2013, Florida’s law states that youth in care “are entitled to participate in age-appropriate extracurricular, enrichment, and social activities.”⁵⁸ The law implements the reasonable and prudent parent standard;⁵⁹ it clarifies that caregivers are “not liable for harm caused to the child in care who participates in an activity approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent parent.”⁶⁰ The law applies to all out-of-home placement types.⁶¹ It also requires that the state child welfare agency ensure that any private providers providing direct care to youth in out-of-home care have policies consistent with the new law.⁶² Florida’s law directs that regulations “shall” be adopted to administer the law.⁶³ As will be discussed in Part III.B. below, regulations can provide significant detail and guidance.

California, Washington, Utah, and Ohio also have enacted normalcy laws that establish clear, enforceable standards.⁶⁴ California, Utah and Florida law explicitly provide that children are entitled to participate in age-appropriate extracurricular, enrichment, and social activities.⁶⁵ California further prohibits the state from erecting any barriers to children’s access to these activities.⁶⁶ California law includes specific language about the quality and purpose of this entitlement, stating that children should engage in those day-to-day activities that promote the most family-like environment for the foster child.⁶⁷

B. What are the Core Components of An Effective Normalcy Law?

The following elements are based on both the federal requirements as well as best practices emerging from the states. When applicable, we refer to existing statutes or model language.

1. States should provide a right for children in foster care to engage in age- or developmentally-appropriate activities, and an affirmative obligation on the child welfare agency to provide these opportunities.

State law should: (a) impose an affirmative and enforceable obligation on the child welfare agency to promote age-appropriate activities and opportunities for youth; (b) empower caregivers to make decisions about participation in activities using the reasonable and prudent parent standard; and (c) accord youth in care the right to participate in these activities. While the new federal Act requires normalcy for all youth in foster care, the law emphasizes the importance of providing such opportunities to those “children who are likely to remain in foster care until age 18 years.”⁶⁸ Because of the centrality of “normalcy” to child and adolescent development and the achievement of permanency, states are urged to apply this requirement to all children, youth, and young adults in care regardless of age.

For example, California law⁶⁹ speaks to the child welfare agency's obligation to provide normalcy to youth in its care as well as the youth's right to experience age-appropriate activities:

Every child adjudged a dependent child of the juvenile court shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities. No state or local regulation or policy may prevent, or create barriers to, participation in those activities. Each state and local entity shall ensure that private agencies that provide foster care services to dependent children have policies consistent with this section and that those agencies promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities.

This core element directs child welfare agencies to take affirmative action to support a youth's chosen activities and interests. The agency should search for such activities in the same way it would seek out other services in the case planning process. This includes addressing transportation and other activity costs, e.g., equipment, uniforms, and fees. Child welfare agencies should consider the following funding strategies to cover these costs:

- Adjust placement costs (rates or *per diems*) to cover the costs of youths' participation in age-appropriate activities.⁷⁰
- Negotiate low or no-cost arrangements with community agencies that offer activities.
- Confer with other state and local child welfare agencies about their strategies for covering these costs. Some agencies have created funds to cover expenses for certain activities, such as attending the prom, purchasing a yearbook, paying fees to obtain a driver's license, and going on school trips, among other things.
- Beginning in fiscal year 2020, the new federal law amends the Chafee Act⁷¹ to add \$3 million to support age-appropriate activities for youth in foster care.⁷² This relatively small amount of money will be divided among the states. Still, states should consider how to use this small increase, as well as reevaluate current uses of Chafee funds to determine if redirection of funds to support age-appropriate activities is advisable.

Minimizing and spreading costs is possible with good planning, creative thinking, and collaboration with community groups, foundations, and stakeholders.

2. States should enforce normalcy provisions by requiring a) inclusion of age-appropriate activities in each child's case plan, b) judicial oversight, and c) youth-friendly grievance procedures.

The new federal law includes an enforcement mechanism for ensuring normalcy for foster youth who have the permanency plan of APPLA.⁷³ For these youth, the court must determine at each permanency hearing whether:

- the foster family home or child care institution is following the reasonable and prudent parent standard; and
- the youth has regular, ongoing opportunities to engage in age- or developmentally-appropriate activities (the court can consult the child in an age-appropriate manner about the child's opportunities to participate in such activities).⁷⁴

States are encouraged to mandate that courts make these findings with regard to all youth, not just those with the APPLA permanency goal. As discussed in Part III.A., the experience of states such as Florida suggests that clear oversight and enforcement mechanisms are key to meaningful change in practice. The case

planning and review system already required by Title IV-E provides one level of accountability.⁷⁵ However, a court or administrative body with the authority to order any actions, services or supports must review the case plan and monitor its implementation to achieve results.

A model law would:

- 1) Require that the youth's case plan describe what age-appropriate or developmentally-appropriate activities and experiences the youth will participate in, including:
 - i. Extra-curricular, enrichment, cultural and social activities;
 - ii. For a child who is 14 years of age or older, opportunities to master independent living skills, and manage freedom and responsibility through real-life experiences; and
 - iii. Any supports needed to fully participate in the activity or experience, including, but not limited to, costs and materials related to transportation, supplies, uniforms, and special fees.
- 2) Require the juvenile court to make findings at all status and permanency review hearings that the child has been provided with the opportunity to participate in age- or developmentally-appropriate activities and experiences, to the greatest extent possible, to promote healthy child and adolescent development.
- 3) Empower the juvenile court to order any actions or supports to ensure such participation.

For example, Washington's normalcy law⁷⁶ requires caseworkers to take an active role in normalcy planning as part of developing the child's individual service and safety plan.

Caseworkers shall discuss the child's interest in and pursuit of normal childhood activities in their monthly health and safety visits and describe the child's participation in normal childhood activities in the individual service and safety plan.

Pennsylvania's proposed normalcy law, HB 2532⁷⁷, requires that the case plan include how the youth will participate in age-appropriate activities and that the court should document whether participation is occurring at status and permanency review hearings:

Section 7. Dispositional review and permanency hearings

At a dispositional review hearing under 42 Pa.C.S. § 6351 (relating to disposition of dependent child), the court shall make findings that the child be provided with the opportunity to participate in age-appropriate and developmentally appropriate activities and experiences, to the greatest extent possible, to promote healthy child and adolescent development, consistent with Federal law and this act.

States also should create grievance procedures so that youth can file complaints related to the provision of normalcy. Most states already have grievance policies; under the Social Security Act, individuals have a right to a fair hearing when they are denied a "benefit" under Title IV-E.⁷⁸ The new federal law amends Title IV-E such that youth are entitled to the same due process protections if they do not receive the mandated normalcy "benefits." Grievance policies must be youth-friendly and easy to understand and use. Above all, the child welfare agency must make youth aware that the grievance processes exist and provide assistance in using them. States that have a foster care Ombudsman should include normalcy in

the list of youth rights or benefits, and among the topics that the Ombudsman can help them address.⁷⁹

3. States should supply youth with a document describing their rights under federal and state law and youth-friendly grievance procedures.

Educating youth about the new federal law and their rights in the child welfare system is a key strategy for securing normalcy, as is increasing youth participation in planning and making decisions about their futures. Youth should know what the law requires and allows. They should be supported in advocating for themselves on all important issues, including normalcy, family visitation, educational choices, and health care.

The new federal Act requires the child welfare agency to provide to youth ages 14 and older a document listing their rights under federal and state law. The document must specifically name “rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents specified in section 475 (5)(I) in accordance with that section, and the right to stay safe and avoid exploitation...”⁸⁰ This document must be “explained to the child in an age-appropriate way” and the case plan must include documentation that the child has received the document.⁸¹

States are encouraged to apply this requirement to children and youth of all ages. States should at least consider the age at which being informed of rights is appropriate, and what an age-appropriate notification of rights may look like for children and youth of different ages and developmental levels. In addition to the rights under the new federal law, states can include in this document any important rights under state law. This can include, for example, rights related to “aging out” of foster care such as eligibility for Medicaid.⁸²

Robust bills of rights that have clear enforcement mechanisms can be powerful tools for empowering youth and changing system standards and practices.

4. States should clarify that providing normalcy to youth in foster care does not alter the legal rights of biological parents.

Providing caregivers with authority to give permission for foster youth to participate in age-appropriate activities is one of the means to the end of promoting normalcy. Laws should clarify that delegating some decision-making authority to caregivers on daily matters does not infringe upon the existing legal rights of a biological parent or guardian.⁸³ For example, the legislative intent section of the law can reinforce the continued importance of parents and guardians in the child’s life. Training for caregivers should highlight this principle and encourage caregivers to involve parents where possible in making decisions about a child’s activities. States should provide foster parents with guidance on when and how to involve biological parents in “normalcy” decisions, just as guidance is provided in other areas on how to interact with and support biological parents, especially in cases in which the goal is reunification.

5. States should ensure meaningful implementation of normalcy provisions in all congregate settings, including the appointment of a “caregiver” as a contract condition.

The new federal law’s normalcy provisions apply to *all* children and youth in substitute care, including those in congregate or institutional care. The law explicitly defines a caregiver to include a “designated official for a child care institution in which a child in foster care has been placed.”⁸⁴ The law requires that a designated official be onsite at all times to exercise the reasonable and prudent parent standard. This ensures that children in group homes or other residential facilities have access to someone who is trained in making decisions using this

standard and can consent to the youth's participation in activities. Federal law requires that these terms be included in contracts between the state or local child welfare agency and a congregate care provider. Therefore, states must amend their laws and regulations governing the contracting or licensing of congregate care facilities accordingly.⁸⁵

California amended its law in 2008⁸⁶ to empower "group home providers" to use the reasonable and prudent parent standard to consent to youth participation in age- or developmentally-appropriate activities.

(a) [...] A group home administrator, a facility manager, or his or her responsible designee, and a caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, in determining whether to give permission for a child residing in foster care to participate in extracurricular, enrichment, and social activities. A group home administrator, a facility manager, or his or her responsible designee, and a caregiver shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

(b) A group home administrator or a facility manager, or his or her responsible designee, is encouraged to consult with social work or treatment staff members who are most familiar with the child at the group home in applying and using the reasonable and prudent parent standard.

Florida, Washington and Utah⁸⁷ followed suit, extending the definition of caregiver to staff of "out-of-home care facilities."

States that enacted such provisions prior to the new federal law report that full implementation and enforcement in group care is extremely challenging. States need to work with congregate care providers to improve or create practices that provide youth with access to age-appropriate activities and experiences. These may include:

- working with the community school where the facility is located to address any barriers to inclusion in activities;
- developing relationships and collaborations with community organizations or groups that provide activities for youth to access;
- including participation in age-appropriate activities among the Independent Living Services and supports that are provided;
- identifying step-down resources or mentors to work with youth and support their participation in age-appropriate activities;
- creating and using tools such the Teen Success Agreement⁸⁸ for congregate care to incorporate normalcy in the case planning process; and
- consulting and partnering with other service providers to support the participation of youth with special needs in age-appropriate activities. This could include teaming with behavioral health service providers and disability services providers.

It is recommended that states convene stakeholders and experts, including youth, to determine best and required practices for implementing normalcy in congregate care. This will likely include examining licensing regulations and policies as well as staffing and training considerations, and the development of creative service partnerships.

The reality is that congregate care settings are not “normal” for youth. Current law specifies that group care be rarely used and only for limited periods of time, and that family-like settings are preferred; research on child development and achieving permanency support the legal requirements.⁸⁹ The new federal Act does not further address the use of congregate care. But its implementation provides states with an opportunity to re-examine their placement continuum and address any issues of over-use of congregate care. While states must enforce normalcy provisions in congregate care, they also should be reducing its use, creating more family-like settings and engaging in increased efforts to achieve permanency for older youth. The normalcy provisions in the new federal law, along with the provisions to limit the use of Another Planned Permanent Living Arrangement (APPLA) should result in increased efforts to recruit foster families and permanency resources for older youth in addition to identifying and supporting family. In the end, the most “normal” setting for a youth is with family. For older youth who have not yet achieved permanency, reducing congregate care can also include providing supervised settings in which youth ages 18-21 live independently, funding for which is available since the Fostering Connections to Success and Increasing Adoptions Act’s amendments to Title IV-E of the Social Security Act.⁹⁰ Such settings can be structured to provide age-appropriate freedom and responsibilities while also supporting permanent and supportive relationships. Efforts such as the Quality Parenting Initiative⁹¹ and the Annie E. Casey Foundation’s Rightsizing Congregate Care⁹² initiative provide valuable resources and strategies that states may adapt to place more youth in family settings.

6. States should codify the reasonable and prudent parent standard and clarify the scope of decision-making authority and the considerations for decision making.

The federal law directs states to adopt the reasonable and prudent parent standard and provides some guidance as to the contours of that standard. The federal Act draws language from statutes in California and Florida to define “reasonable and prudent parent standard” as:

the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.⁹³

The Act also defines “age- or developmentally-appropriate” as:

- (i) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
- (ii) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.⁹⁴

As discussed in more detail below, states should define as explicitly as possible the scope of caregivers’ decision-making authority, and the factors that the caregiver should take into account when deciding to give or deny permission for participation in activities. Giving caregivers decision-making authority for youth to participate in age-appropriate activities does not mean the decision will always be “yes.” Like any parent or concerned caregiver, many factors must be weighed. Providing

guidance on those factors is extremely important to impact practice in the daily lives of youth in care.

a. Defining the Scope of Decision-Making Authority

State laws should specify *the types* of activities that a caregiver is empowered to permit a youth to participate in. The federal law provides some specific examples for states to include:

- social, extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one (1) or more days, and
- decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.⁹⁵

Clarity will help allay caregivers' understandable fears in exercising this judgment. Including an illustrative, non-exhaustive list of activities in statute is key to providing such clarity. Currently, many states are vague about the scope of a caregiver's authority. For example, in Indiana and Missouri, a resource parent may independently give children permission to participate in "recreation," and the foster parent guide encourages them to enroll children in "sports and other activities."⁹⁶ Alaska's resource family handbook encourages caregivers to enroll youth in "activities" generally; state licensing regulations only explicitly require social worker consent for items such as high-risk activities or major changes in personal appearance.⁹⁷ Without more specificity about the types of covered activities, caregivers may be more inclined to deny permission, to the youth's detriment. Covered activities included in current state statutes⁹⁸ include:

- After school or summer employment
- Reasonable and age-appropriate access to phone and computer usage
- Reasonable curfews and rules regarding dating and socializing
- Obtaining a learner's permit, learning to drive, and obtaining a license consistent with state law
- Allowing the following specific activities without direct supervision:
 - Going to the movies
 - Trips to the mall
 - Work
 - Athletic events
 - Dating
 - Visits to friends' houses⁹⁹

A state may opt to legislate that a state agency promulgate regulations in a defined period of time¹⁰⁰ that describe in more detail the scope of activities to which a caregiver can give consent and include examples. Florida's regulations provide the following concrete examples:

- Social and extracurricular activities
- Employment
- Phone usage
- Reasonable curfews
- Travel with other youth and adults

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- Drive a car and obtain a learner's permit and driver's license as appropriate for his or her age, maturity level, and availability of insurance.
- Having his or her picture taken for publication in a newspaper or yearbook
- Receiving public recognition for accomplishments
- Participating in school or after-school organizations or clubs
- Participating in community events
- Dating
- Babysitting
- Arriving at home after school¹⁰¹

A recurring issue that arises is whether background checks of certain individuals are required for youth to participate in certain activities. States should clearly speak to this issue in statute or regulation. Some states already do. For example, in Washington State no background check is required for caregivers to consent to an activity approved under the reasonable and prudent parent standard, including overnight visits outside their direct supervision.¹⁰² Clearly stating in law the circumstances in which background checks are not needed is key.

b. Defining Consideration for Decision Making

State laws also should clarify what factors and knowledge a caregiver will employ in making decisions about youths' participation in activities. Under the new federal law, a caregiver acting as a "prudent parent" is to consider the youth's developmental level, including his or her cognitive, emotional, physical, and behavioral capacities.¹⁰³

Florida's law¹⁰⁴ goes further than the federal standard, directing the caregiver to consider the:

- (1) overall age, maturity and developmental level of the child;
- (2) potential risk and appropriateness of the activity;
- (3) best interest of the child;
- (4) importance of encouraging the child's emotional and developmental growth;
- (5) importance of providing the child with the most family-like experience possible; and
- (6) behavioral history of the child.

The Center for the Study of Social Policy (CSSP) further recommends that "nurturing" be incorporated into the reasonable and prudent parent definition.¹⁰⁵ Such language reinforces the expectation that caregivers of youth in foster care are to provide more than simply room and board.

CSSP also makes several helpful recommendations for facilitating normalcy for youth who may face special barriers to participating in age-appropriate activities.¹⁰⁶ These include lesbian, gay, bisexual, transgender, and questioning (LGBTQ) and pregnant and parenting youth.¹⁰⁷ Caregivers will need special training and support so that they can adequately support these youth and facilitate opportunities for participation in activities and experiences. "For LGBTQ youth, exploring sexual identity, gender expression and coming out can be a long process that needs to be supported in a safe space. For expectant and parenting youth, the framework for discussing healthy sexual development must acknowledge the youth's position as a parent or expectant parent and include a focus on decisions moving forward as well as those specific to healthy development though pregnancy."¹⁰⁸

States should make clear the expectation that these youth deserve normalcy and work to reduce barriers to including these youth in the new law's implementation. LGBTQ and pregnant and parenting youth comprise a large portion of our child welfare population.¹⁰⁹ States must address the barriers to experiencing normalcy that they confront in order to comply with federal law. Accordingly, it is recommended that decision making about youth participation in an activity include considering the importance of supporting the youth's:

- Health and sexual identity development;¹¹⁰ and
- Skills and rights as a parent if he or she is a pregnant or parenting youth.¹¹¹

States also must serve the large numbers of youth with disabilities and special needs in the child welfare system, and facilitate their access to age-appropriate opportunities that provide normalcy. These youth cannot be shielded from opportunities simply based on their disability. At a minimum, states and localities must comply with the Americans with Disabilities Act (ADA)¹¹² and the Rehabilitation Act.¹¹³ Specifically, they must provide reasonable accommodations for youth with special needs to access age-appropriate activities to the greatest extent possible. To that end, it is recommended that state statutes reiterate anti-discriminatory mandates in federal law. Child welfare agencies should collaborate with disability service providers and advocates to develop strategies for providing support to caregivers so that youth with disabilities can experience normalcy like their peers to the greatest extent possible. It is recommended that decision making about youth participation in an activity include considering the importance of supporting the youth's ability to participate by providing accommodations consistent with the law if the youth has a disability or other special needs.

Finally and importantly, youths' desires should be listed in state law as a consideration for the caregiver so that it is clear that their voice is respected and to encourage their involvement in the decisions that impact their lives. Including youth voice is consistent with many provisions in the new federal Act. Among the recommended considerations are the youth's desires and interests.

States should require training and guidance for caregivers, public and private child welfare agency staff, the judiciary, and attorneys on the reasonable and prudent parent standard.

The new Act requires states to train foster parents, caregivers, and child welfare agencies on the reasonable and prudent parent standard. This includes direction as to the scope of caregivers' authority, what factors to consider in decision making, and the extent of protection from liability when exercising this standard. Such training should be mandatory as a condition of licensing for foster caregivers and agencies and child care institutions.

Florida regulations¹¹⁴ provide an excellent example of a multi-faceted reasonable and prudent parent standard:

(10) Normalcy for Adolescents and Teenagers in the Custody of the Department. Adolescents and teenagers who are in the custody of the department shall, as appropriate based on age and maturity level, be allowed and encouraged by the licensed out-of-home caregiver, to engage in appropriate social and extracurricular activities to promote the child's social development and maturity. The Services Worker and the licensed out-of-home caregiver shall work together to ensure the following for the child:

(g) Affording the child every opportunity for social development, recreation and to have normal life experiences. The child may attend overnight or planned outings if the activity is determined by the licensed out-of-home caregiver to be safe and appropriate. The Services Worker shall be available

for consultation, and shall be notified of the activity.

1. The decision process for determining approval for such events shall take into account the provision for adult supervision appropriate to the child's age and development level.
2. Criminal, delinquency and abuse/neglect history checks for dating, outings and activities with friends, families and school and church groups are not necessary for participation in normal school or community activities.
3. In determining whether or not the child may participate in such activities, the licensed out-of-home caregiver shall:
 - a. Be as diligent in determining approval for such events as he or she would for his or her own children, and
 - b. Use his or her parenting skills to familiarize himself or herself with the individual or group that the child wishes to spend time with and evaluate the child's maturity level and ability to participate in the activity appropriately.

Although not mandated by federal law, such training also should be afforded to judges; lawyers for children, parents, and child welfare agencies; and other court personnel. Normalizing the lives of children in foster care requires a dramatic shift in culture and practice at all levels of the child welfare system, including the courts. Therefore, it is recommended that these trainings be mandatory for the judiciary and attorneys for all parties in child welfare proceedings.

Trainings can incorporate tools developed to help youth and their caregivers build a relationship that allows the youth to take on age-appropriate freedom and responsibility. For example, in California many caseworkers facilitate "shared living agreements" (SLAs) between youth and their caregivers; the SLAs lay out a youth's concerns, goals, and responsibilities as to the youth's transition to a successful adulthood.¹¹⁵ Each agreement is to reflect "the specific values, concerns and personalities of the caregiver" and the dependent young adult, and families are encouraged to update the agreements periodically.¹¹⁶ Likewise, in Pennsylvania, a group of youth involved with Juvenile Law Center's foster youth engagement program developed an instrument called the Teen Success Agreement (TSA).¹¹⁷ The TSA is to be filled out by the youth, caregiver(s) and case worker, and "outlines the age-appropriate activities, responsibilities, and life skills for youth ages 13-21 in the child welfare system, and how the caregivers and agency will support those goals."¹¹⁸ The plan also lists the house rules and rewards and consequences for different behaviors."¹¹⁹ Every six months, the youth, caregiver(s) and caseworker are to meet to discuss and update the agreement.¹²⁰ With proper training, caregivers can use these tools in the exercise of the reasonable and prudent parent standard.

8. States should afford protections from liability to foster parents and caregivers who follow the reasonable and prudent parent standard.

Caregivers who appropriately apply the reasonable and prudent parent standard must be exempt from liability for injuries that occur as a result of their decision. Fear that caregivers and agencies will be liable if a child is harmed doing an activity to which they consented drives these actors to say "no." This is one of the greatest barriers to normalcy. State laws must set a standard of care in decision making that reflects good practice, but must also provide caregivers with protection when they act according to those standards.

Tort liability is an issue of state law, but the federal Act requires states to provide some protection to caregivers who use the reasonable and prudent parent standard. This standard reflects law and policy in a number of states that explicitly include liability protections in their statutes. For example, in Illinois, courts have determined that foster parents are not liable for injury caused to children in their care due to conduct inherent to the parent-child relationship.¹²¹ In Arkansas, foster parents are statutorily immunized from suit unless injury results to a child in their care from “malicious, willful, wanton, or grossly negligent conduct.”¹²² Similarly, in Ohio, foster parents are immune from liability except for malicious bad faith, wanton, or reckless conduct.¹²³ Florida, Utah, Washington and Ohio have explicitly provided liability protection for caregivers who make decisions using the reasonable and prudent parent standard.¹²⁴ These laws provide examples of workable standards. When paired with a clearly defined reasonable and prudent parent standard as recommended above and a robust and comprehensive training curriculum, liability protections can be provided while also promoting high standards for caregivers.

*Promoting Normalcy
for Children and Youth
in Foster Care*

Part III

CONCLUSION: A TIME FOR STATE ACTION

Normalcy is a developmental imperative for youth in care. The normalcy provisions of the Preventing Sex Trafficking and Strengthening Families Act provide states with a unique opportunity to give foster children and youth the same growth experiences as those who are raised in families. But implementation of the new law is only one step toward a larger goal of creating a more developmentally-appropriate child welfare system. Normalcy is truly achieved when children and youth learn skills and develop relationships while growing up in a stable, loving family, whether it be a family tied by blood or created through affinity and choice. Thus, while implementation of the new law's normalcy provisions is critical, the child welfare system must re-double efforts to find permanency within families for all foster youth, including older youth in care. Such efforts must include reducing the use of APPLA and enhancing meaningful youth participation in case planning, as is required by the new federal law. While this paper focuses on the new law's implementation, it is part of a broader, ongoing conversation among practitioners and advocates¹²⁵ about transforming the system for children, youth and young adults. In a transformed child welfare system, a larger number of children and youth find permanency and family and have the quality of experiences, opportunities, and relationships all of them deserve. Creating such a system is not only fair and humane, but increases the odds that children and youth will achieve stability and success.

ENDNOTES

- 1 For an excellent analysis of issues surrounding implementation of the entire law see Children's Defense Fund, Child Welfare League of America, First Focus, Generations United Foster Family-Based Treatment Association, Voices for Adoption, *Implementing the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) To Benefit Children and Youth* (January 14, 2015), (hereinafter "Implementing the Strengthening Families Act") available at <http://www.childrensdefense.org/library/data/implementing-the-preventing.pdf> (last accessed May 4, 2015).
- 2 For more information on the effective dates of each provision and options for extensions see *Implementing the Strengthening Families Act*, *supra* note 1 and Administration for Children and Families, Information Memorandum, NEW LEGISLATION - Public Law 113-183, the Preventing Sex Trafficking and Strengthening Families Act, ACYF-CB-IM-14-03 (October 23, 2014), available at <http://www.in.gov/children/files/ACYF-CB-IM-14-03.pdf> (last accessed May 4, 2015).
- 3 See Testimony of Lynn Tiede, Policy Director at Jim Casey Youth Opportunities Initiative, *Letting Kids Be Kids: Balancing Safety with Opportunity for Foster Youth*, Hearing Before U.S. House Committee on Ways and Means, Subcommittee on Human Resources (May 9, 2013), available at http://waysandmeans.house.gov/uploadedfiles/lynn_tiede_testimony_hro50913 (last accessed February 20, 2015).
- 4 Jim Casey Youth Opportunities Initiative, *Aging Out*, (hereinafter "Aging Out") available at <http://www.jimcaseyyouth.org/about/aging-out> (last visited May 3, 2015).
- 5 This Paper addresses the promotion of normalcy in all out-of-home placements in the child welfare system. The term "foster care" includes all out-of-home placements not simply family foster care.
- 6 Preventing Sex Trafficking and Strengthening Families Act (hereinafter "P.L. 113-183"), Pub. Law No. 113-183, §§ 111, 112.
- 7 P.L. 113-183, *supra* note 6, § 111.
- 8 See *id.* at § 113, entitled "Empowering Foster Children Age 14 and Older in the Development of their own Case Plan and Transition Planning for a Successful Adulthood."
- 9 For purpose of this paper, the terms "child" and "children" refer to minors under 12 years of age, the term "youth" refers to minors 13-17 years of age, and the term "young adult" refers to individuals 18 years of age and older.
- 10 Laurence Steinberg, Ph.D., *Age of Opportunity* 10-11 (2014).
- 11 Jim Casey Youth, *The Adolescent Brain: New Research and its Implications* 20 (2011) (hereinafter "The Adolescent Brain"), available at <http://www.jimcaseyyouth.org/adolescent-brain%E2%80%94new-research-and-its-implications-young-people-transitioning-foster-care> (last accessed May 4, 2015).
- 12 See *id.* at 21.
- 13 See, e.g. The Adolescent Brain: *supra* note 11; *Beyond Raging Hormones*, Harvard Mental Health Letter (July 2005) (last accessed May 5, 2015), available at <http://www.health.harvard.edu/blog-extra/the-adolescent-brain-beyond-raging-hormones>.
- 14 See *id.* at 20.
- 15 See Jim Casey Youth Opportunities Initiative, *Social Capital: Building Quality Networks for Young People in Foster Care* 1 (2012) (hereinafter "Social Capital"), available at <http://www.jimcaseyyouth.org/sites/default/files/documents/Issue%20Brief%20-%20Social%20Cap.pdf>
- 16 Cf The Adolescent Brain, *supra* note 11 at 18.
- 17 See *id.*
- 18 See Social Capital, *supra* note 15 at 1.
- 19 Compas, Hinden & Gerhardt, *Adolescent Development: Pathways and Processes of Risk and Resilience*, 46 Ann. Rev. Psychol. 265 – 93 (1995) (cited in The Adolescent Brain, *supra* note 10).
- 20 See, e.g. Clinton County Ohio's 2008 Foster Child Overnight Policy, available at <http://co.clinton.oh.us/wp-content/uploads/2011/04/Foster-Child-Overnight-Stays.pdf>; See also Ohio Child Safety Summit, *Foster Care Advisory Group: Recommendations* 11 (Apr. 2013), available at <http://www.ohioattorneygeneral.gov/OhioAttorneyGeneral/files/40/4062f373-0495-4b8d-a5e4-45d3767e801c.pdf> (last accessed May 4, 2015); see also Foster Parent Manual, Centre County Pennsylvania, page 17 -18. 28 - 29 (specifying the necessity for biological parent permission for foster youth to hunt, and agency and biological parent permission to ride in ATVs, motorcycles and snowmobiles and the inability of foster parents to sign off on organized sports and driving instruction.) available at <http://centrecountypa.gov/DocumentCenter/View/204> (last accessed May 5, 2015.)

Endnotes

- 21 Foster parents and caregivers do *not* have the same legal rights to make decisions about their foster children as they do their biological children. There are many decisions about the upbringing of the child that remain with the biological parent even when a child is placed in the child welfare system. However, it is also clear that foster parents and caregivers play a crucial role in the daily care of children placed with them and routinely must make decisions in the course of this caregiving obligation. It is these daily decisions about age-appropriate activities that foster parents and caregivers should consider in the same fashion as they would for any child in their care, including their own children.
- 22 Christina Spudeas, Robin Rosenberg, and Andrea Cowart, *Letting Kids Be Kids: Victory in Florida*, North American Council on Adoptable Children, Adoptalk, (September 2013) (last accessed May 5, 2015), available at <http://www.nacac.org/adoptalk/adoptalkarticles.html>.
- 23 See, e.g. Youth Testimony, Meeting of Florida Senate Children, Families and Elder Affairs Committee (Feb. 5, 2013) (last accessed May 5, 2015), video available at https://www.flsenate.gov/media/videoplayer?EventID=2443575804_2013021035.
- 24 In fact, P.L. 113-183, *supra* note 6, recognized the link between the failure to provide youth in foster care normalcy and sex trafficking and requires states to develop procedures for identifying youth in foster care who are at risk of being sex trafficked and creating services to address their needs. See 42 U.S.C. 671 (a)(9)(C)(i). Included in this “at risk” group are youth who have “run away from foster care” who are under age 18, youth over 18 who have left extended foster care or are receiving services under the Chafee Act. *Id.* at (a)(9)(C)(i)(I).
- 25 *Aging Out*, *supra* note 4.
- 26 See *id.* (Noting that 71 percent of female former foster youth become pregnant by age 21, and 25 percent of former foster youth become involved with the criminal justice system within two years of leaving the system.)
- 27 Gary Stangler, *Aging Out of Foster Care; The Costs of Doing Nothing Affect us All*, Huffington Times, July, 28, 2013, http://www.huffingtonpost.com/gary-stangler/aging-out-of-foster-care-_b_3658694.html?utm_hp_ref=impact. Social costs include direct costs, like public assistance and incarceration, as well as items like lost wages
- 28 Pew Charitable Trusts, *Time for Reform: Aging Out and On Their Own* (Mar. 2007), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2007/05/01/time-for-reform-aging-out-and-on-their-own> (last accessed May 5, 2015.)
- 29 Children in Foster Care in the United States, Kids Count Data Center, available at <http://datacenter.kidscount.org/data/tables/6243-children-in-foster-care?loc=1&loct=1#detailed/1/any/false/868,867,133,38,35/any/12987> (last accessed May 5, 2015).
- 30 See *id.* Children Exiting Foster Care by Exit Reason, available at <http://datacenter.kidscount.org/data/tables/6277-children-exiting-foster-care-by-exit-reason?loc=1&loct=1#detailed/1/any/false/868,867,133,38,35/2629,2630,2631,2632,2633,2634,2635,2636/13050,13051> (reflecting the number of children who exit care because of “emancipation.”) (last accessed May 5, 2015).
- 31 *Aging Out*, *supra* note 4.
- 32 Family Connection Grants were authorized by the Fostering Connections to Success and Increasing Adoptions Act of 2008. 42 USC § 627. The grants were intended to connect children with relatives by funding a range of activities. P.L. 113-183, *supra* note 6 provided funding for the last year of grants awarded in 2012. Because the provision of the law was not reauthorized, no new funding for Family Connections Grants can be awarded unless there is new legislation.
- 33 See *supra* note 2 for information about effective dates of provisions of P.L. 113-183.
- 34 See P.L. 113-183 *supra* note 6 at § 111 (d).
- 35 It should be noted that the Act’s provisions when implemented as a whole will increase the odds that older youth will be placed in family settings, which in turn provide “normalcy” to youth.
- 36 See P.L. 113-183 *supra* note 6. Section 112 also contains important provisions restricting the use of APPLA as a permanency goal. Restricting the use of APPLA as a permanency plan is an important strategy for providing youth the most family-like setting and thus promoting normalcy. A future paper will provide more details on strategies for states to best implement this provision.
- 37 See P.L. 113-183, *supra* note 6.
- 38 See *id.* at § 111 (c) (8).
- 39 See P.L. 113-183, *supra* note 6 at § 111(a). The Act defines “reasonable and prudent parent standard” as “the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to

- allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.”
- 40 See *id.* at § 111. The law specifies that training should include the “knowledge and skills relating to the reasonable and prudent parent standard for the child’s participation in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of a child’s cognitive, emotional, physical, and behavioral capacities, and knowledge and skills relating to applying the standard to decisions such as whether to allow the child to engage in social, extracurricular, and enrichment activities, including sports, field trips, and overnight activities lasting one or more days, and to decisions involving the signing of permission slips and arranging of transportation for the child to and from social, extracurricular, and enrichment activities.”
- 41 See P.L. 113-183, *supra* note 6 at § 111.
- 42 See *id.* at § 112 (b).
- 43 See *id.* at § 113 (e) (1).
- 44 See *id.* at § 113 (d).
- 45 Ariz. Rev. Stat. Ann. § 8-529 (granting the right “[t]o attend community, school and religious services and activities of the child’s choice to the extent that it is appropriate for the child.”); Massachusetts Health and Human Services, *Foster Child Bill of Rights* (last visited May 22, 2014), available at <http://www.mass.gov/eohhs/gov/departments/dcf/foster-care/our-children-and-youth/foster-child-bill-of-rights.html> (last accessed May 5, 2015); N.C. Gen. Stat. Ann. § 131D-10.1 (codifying Foster Children’s Bill of Rights); 11 Pa. Stat. Ann. § 2633 (granting right to “opportunity to participate in extracurricular, cultural and personal enrichment activities”).
- 46 Importantly, P.L. 113-183 § 113 requires that youth age 14 and older be provided a document that describes the rights of the youth with respect to education, health care, visitation, and court participation, the right to be provided with the documents specified pursuant to federal law, and the right to stay safe and avoid exploitation, and that the case file includes a signed acknowledgment by the child that the youth has been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way. While this requirement does not speak to enforcement, it does address notification of the child.
- 47 Arkansas Department of Human Services, Division of Children and Family Services, *Foster Parent Handbook* 18 (2013), available at <http://humanservices.arkansas.gov/dcf/DCFSpublications/PUB-030.pdf> (last accessed May 5, 2015).
- 48 See *id.*
- 49 Colo. Rev. Stat. Ann. § 19-7-103.
- 50 See codification of HB 215, The Florida Senate (Fl. 2013) at F.S.A. § 39.4091.
- 51 The Florida Senate, Children, Families and Elder Affairs Committee, Committee Meeting Expanded Agenda for Feb. 5, 2013 3 (2013), available at https://www.flsenate.gov/PublishedContent/Committees/2012-2014/CF/MeetingRecords/MeetingPacket_2018.pdf (citing prior version of Fla. Admin. Code Ann. r. 65C-13.029) (last accessed May 5, 2015).
- 52 *Id.* However, overnight trips longer than one night had to be approved by the caseworker, who also had to be notified about shorter trips.
- 53 Florida Department of Children and Families, Memorandum from Lucy D. Hadi, DCF Secretary, Re: Normalcy for Children in Custody of the Department (Aug. 31, 2005), available at <http://centerforchildwelfare.fmhi.usf.edu/kb/normalcy/NormalcyMemo-Hadi2005.pdf> (last accessed May 5, 2015).
- 54 Florida Department of Children and Families, Child Leadership Program Class IV, *Normalcy Training* (Aug. 2008), available at <http://centerforchildwelfare.fmhi.usf.edu/kb/normalcy/NormalcyTrainingPacket.pdf> (last accessed May 5, 2015). In a section entitled “Historical Perspective” training materials state that “mandated Normalcy Plans were not being developed for the youth and most licensed caregivers and providers were unaware of the guidelines and need for our youth to have opportunities for ‘normal’ age-appropriate experiences.”
- 55 See “Important Message Regarding Normalcy for Children in Out-of-Home Care from the Department of Children and Families’ Secretary David E. Wilkins” in Kids First of Florida, January 20, 2012, available at <http://www.kidsfirstofflorida.org/images/kff%20newsletter%20february%202012.pdf> (last accessed May 4, 2015).
- 56 Committee Meeting Expanded Agenda for Feb. 5, 2013, *supra* note 48.
- 57 Telephone Interview with Christine Spudeas, Executive Director, Florida Children’s First (Mar. 14, 2014).

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- 58 Fl. Stat. Ann. § 39.4091 (3)(a).
- 59 *Id.* at (3)(b).
- 60 *Id.* at (3)(d).
- 61 *Id.* at (2)(b)(definition of “caregiver”).
- 62 Fl. Stat. Ann. § 39.4091 (3)(c).
- 63 *Id.* at (4).
- 64 Cal. Welf. & Inst. Code § 362.05; Fla. Stat. Ann. § 409.145(2)(c); U.C.A. 1953 § 62A-4a-211; Ohio Rev. Code Ann. § 5103.162
- 65 *See* Cal. Welf. & Inst. Code § 362.05; Fla. Stat. Ann. § 409.145(2)(c). U.C.A. 1953 § 62A-4a-211
- 66 Cal. Welf. & Inst. Code § 362.05
- 67 *See id.* at §361.2 (k); AB 408, California State Legislature, October 10, 2013.
- 68 P.L. 113-183, *supra* note 6 at § 111 (c).
- 69 Ca. Welf. & Inst. Code Sec. 362.05.
- 70 “Foster care maintenance payments” include payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. 42 U.S.C. § 675 (4)(A). Some of the costs associated with participating in age-appropriate activities are among the costs that are reimbursable under Title IV-E as foster care maintenance payments.
- 71 The Foster Care and Independence Act of 1999, Pub. Law No. 106 – 109, often referred to as the “Chafee” Act in honor of its sponsor Senator Chafee from Rhode Island, was aimed at improving the outcomes of youth who age out of the foster care system through the development of independent living skills. The Act also provided funds that could be used for room and board for youth who aged out of care at 18 but are still under 21. A later amendment added the Chafee Education and Training Voucher (ETV) program, which provides funds that youth who age out of foster care may use towards post-secondary education.
- 72 42 U.S.C. 677 (h)(1).
- 73 *See* P.L. 113-183, *supra* note 6 at § 112.
- 74 *See id.*
- 75 *See* 42 U.S.C. § 675.
- 76 Wash. Rev. Code Ann. § 74.13.710.
- 77 HB 2532, Pennsylvania General Assembly, Reg. Sess. 2013 – 14 (Pa. 2014).
- 78 *See* 42 U.S.C. 671 (a) (12). Federal law currently requires certain due process protections for “benefits” granted or denied pursuant to Title IV-E. Specifically, a state’s Title IV-E plan must “provide[] for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness.”
- 79 For more information on the eleven states that operate independent and autonomous Ombudsman offices that specifically handle issues related to children, *see* National Conference of State Legislatures, Children’s Ombudsman Offices/ Office of the Child Advocate (last accessed May 5, 2015), available at <http://www.ncsl.org/research/human-services/childrens-ombudsman-offices.aspx>.
- 80 *See* P.L. 113-183, *supra* note 6 at § 113.
- 81 *See id.*
- 82 The Affordable Care Act makes young adults who were in foster care at age 18 or older and enrolled in Medicaid at that time categorically eligible for Medicaid until age 26. 42 U.S.C.A. § 1396a(a)(10)(A)(i)(IX).
- 83 When children are placed in foster care, their parents often retain many of the crucial decision-making rights included in federal or state statutes or protected by the 14th Amendment of the U.S. Constitution unless otherwise limited by the court. *See Santosky v. Kramer*, 455 U.S. 745, 753 (1982)(stating that “the fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.”) Normalcy legislation does not alter these rights, but does clarify that foster caregivers should be empowered to make daily

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- decisions about activities and opportunities without having to consult with the child welfare agency or parent. States, however, should consider implementing policies to identify cases where consultation with the parents is advisable and will improve the chances of reunification and permanency outcomes.
- 84 See P.L. 113-183, *supra* note 6 at § 111.
- 85 See *id.*
- 86 Cal. Welf. & Inst. Code § 362.05 (West).
- 87 See Fla. Stat. Ann. § 409.145(2) (c); Wa. St. 74.13.710; U.C.A. 1953 § 62A-4a-210.
- 88 Youth advocates of Youth Fostering Change developed the Teen Success Agreement for youth in foster homes. This tool, which prompts and structures planning for participation in age-appropriate activities and opportunities, can be modified for congregate care settings.
- 89 For a discussion of this issue, see Kids Count Data Snapshot on Foster Care Placement, *Moving in the Right Direction: More Kids in Families* (May 2011), available at <http://www.aecf.org/m/resourcedoc/AECF-DataSnapshotOnFosterCarePlacement-2011.pdf#page=1> (last accessed May 5, 2015).
- 90 42 U.S.C. 672 (c) (2)(including “a supervised setting in which the individual is living independently” among the Title IV-E reimbursable settings for young adults 18-21) .
- 91 For more information on the Quality Parenting Initiative developed by the Youth Law Center, see their site <http://www.ylc.org/our-work/action-litigation/quality-foster-care/quality-parenting-initiative/> (last accessed May 5, 2015).
- 92 For more information, see *Rightsizing Congregate Care: A powerful First Step in Transforming the Child Welfare System* (Annie E. Casey Foundation January 1, 2009), available at: <http://www.aecf.org/resources/rightsizing-congregate-care/> (last accessed May 5, 2015.)
- 93 P.L. 113-183 (2014), Section 111.
- 94 *Id.*
- 95 See *id.*
- 96 Indiana Department of Child Services, *Foster Family Resource Guide* 13 (2008), available at <http://www.in.gov/dcs/files/1003NewFosterGuide4Web.pdf> (last accessed May 5, 2015); Missouri Department of Social Services, Children’s Division, *Resource Parent Handbook* 16 (2013), available at <http://www.dss.mo.gov/cd/fostercare/pdf/fcresource.pdf>. (last accessed May 5, 2015).
- 97 See Alaska Department of Health & Social Services, *Alaska’s Resource Family Handbook*, available at <http://www.alaskacasa.org/resources/1/ResourceFamilyHandbook.pdf>. (last accessed May 5, 2015). Further guidance on examples of high-risk activities (use of an infant walker, a child walking along a river’s edge) are provided in Alaska’s administrative code at Alaska Admin. Code tit. 7, § 50.400 but foster parents would be unlikely to have access to this.
- 98 See, e.g. Fla. Admin. Code r. 65C-30.007 on which this list is based.
- 99 The Children’s Advocacy Alliance in Nevada recommends that the list include getting piercings and changing hairstyles (other than basic haircuts). Children’s Advocacy Alliance, *Reasonable and Prudent Parent Standards*, 4 (September 2014), available at <http://caanv.org/wp-content/uploads/2014/08/Prudent-Parent-Laws-NV-Final.pdf>. (last accessed May 5, 2015).
- 100 Some states face challenges in getting regulations promulgated. To address this concern, advocates may want to press for deadlines for regulation promulgation.
- 101 Fla. Admin. Code Ann. r. 65C-30.007 (10) (Normalcy for Adolescents and Teenagers in the Custody of the Department). Section (10) (h) also clarifies that a youth may participate in some activities without adult direct supervision and that such situations should be considered based on the caregiver’s “familiarity with the child and the circumstances in which the child shall be unsupervised,” including “the child’s age, maturity, and ability to make appropriate decisions.”
- 102 See Wa. St. 74.13.710 (3).
- 103 See P.L. 113-183, *supra* note 6 at § 111 (a) (1).
- 104 Fla. Stat. Ann. §§ 39.4091(3)(b), 409.145(3)(b)(2).
- 105 Center for the Study of Social Policy, *Promoting Well-Being Through the Reasonable and Prudent Parent Standard: A Guide for States Implement the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)* 3 (2014), (hereinafter “Promoting Well-Being Through the Reasonable and Prudent Parent Standard”), available at <http://www.cssp.org/policy/2014/A-GUIDE-FOR-STATES-IMPLEMENTING-THE-PREVENTING-SEX-TRAFFICKING-AND-STRENGTHENING-FAMILIES-ACT-HR-4980.pdf> (last accessed May 5, 2015.)

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- 106 *Id.*
- 107 *Id.*
- 108 *Id.* at 4-5.
- 109 See Child Welfare Information Gateway, *Supporting Your LGBTQ Youth: A Guide For Foster Parents* (2013), available at <https://www.childwelfare.gov/pubPDFs/LGBTQyouth.pdf> (last accessed May 4, 2015) Stating that LGBTQ youth make up an estimated 5-10% of the population of foster youth aged 10-18.
- 110 See *Promoting Well-Being Through the Reasonable and Prudent Parent Standard*, *supra* note 105 at 4.
- 111 See *id.* at 5.
- 112 42 U.S.C.A. § 12101 et seq. (Equal Opportunity for Individuals with Disabilities). The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation.
- 113 29 U.S.C.A. § 701 et seq. (Vocational Rehabilitation and Other Rehabilitation Services). The Rehabilitation Act prohibits discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving Federal financial assistance, including Title IV-E child welfare funds.
- 114 Fla. Admin. Code Ann. r. 65C-30.007.
- 115 *California Fostering Connections to Success, Additional Resources*, available at <http://www.cafosteringconnections.org/resources.html>. (last accessed May 5, 2015) Template Word document available at calswec.berkeley.edu/files/.../CalSWEC/AB12_SLA_TC_042312.doc (last accessed February 20, 2015).
- 116 See California Department of Human Services, All County Letter No. 11-77, Extension of Foster Care Beyond Age 18: Part Two (Placement), available at <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2011/11-77.pdf>. (last accessed May 5, 2015).
- 117 Youth Fostering Change: a Project of Juvenile Law Center, *Teen Success Agreement* (Aug. 2012), available at <http://www.jlc.org/resources/publications/teen-success-agreement> (last accessed May 5, 2015).
- 118 See *id.*
- 119 See *id.*
- 120 See *id.*
- 121 See *Nichol v. Stass*, 735 N.E.2d 582 (Ill. 2000).
- 122 Ark. Code Ann. § 9-28-115.
- 123 Ohio Rev. Code Ann. § 5103.162.
- 124 29 U.C.A. 1953 § 62A-4a-212; Fla. Stat. Ann. § 409.145(2)(c); Ohio Rev. Code Ann. § 5103.02; Wa. St. 74.13.710.
- 125 This conversation has been occurring among many organizations and advocates, such as the Jim Casey Youth Opportunity Initiative and its Success Beyond 18 Campaign and the Center for the Study of Social Policy's Youth Thrive Initiative. The Jim Casey Youth Opportunities Initiative has been at the forefront of reforming the child welfare system to improve outcomes and opportunities for older youth and young adults. Developing a system that is age- and developmentally-appropriate, driven by the participation and voice of youth in care, and grounded in the expectation that all youth deserve permanency and supportive adult connections has been central to the Initiative's work. Its Success Beyond 18 Campaign seeks to build foster care systems that support youth until age 21 if they need it, but also to change how the system treats and services older youth. For more information about the Jim Casey Youth Opportunities Initiative visit their site at <http://www.jimcaseyyouth.org/our-vision-and-mission>. For more specific information about the Success Beyond 18 Campaign visit its website at <http://www.jimcaseyyouth.org/about-o>. Youth Thrive: Advancing Healthy Adolescent Development and Well-Being is an initiative of the Center for the Study of Social Policy that provides a framework for healthy development and well-being for adolescents. This multi-year initiative examines how foster youth can be supported in ways that advance healthy development and well-being and reduce the impact of negative life experiences. For more information see their website at <http://www.cssp.org/reform/child-welfare/youth-thrive>.

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