

Foster Care Extended to Age 21

**Since the post was published, S.L. 2017-161 added G.S. 7B-200(a)(5a), which provides the district court with exclusive, original jurisdiction over a G.S. 7B-910.1 review. Additionally, a technical correction was made to G.S. 7B-910.1.*

The new year brings Foster Care 18-21 to North Carolina. This is a new program that offers extended foster care to children who have aged out from foster care. Foster Care 18-21 was created by [S.L. 2015-241](#), Section 12C.9 and became effective on January 1st. The North Carolina Division of Social Services provides additional information about this new program in its [Child Welfare Services Policy Manual, Section 1201, XII](#) (“NC DSS §1201, XII”).

Eligibility Based on Age

A juvenile who is in foster care when he or she turns 18 may enter into a voluntary foster care agreement with a county department and continue to receive foster care services and benefits until turning 21. [G.S. 131D-10.2B\(a\)](#). The young adult who has aged out of foster care may enter into a voluntary foster care agreement at any time prior to his or her 21st birthday. *Id.*

There is nothing in the statute or state policy that limits enrollment to those children who age out of foster care on or after January 1, 2017. As a result, it appears that children who aged out of foster care before January 1, 2017 and who are not yet 21 years old may enroll in the Foster Care 18-21 program. Those young adults may contact either the county department where they were in foster care (county of origin) or where they currently reside. NC DSS §1201, XII.J.

Additional Eligibility Criteria

To be eligible for these extended benefits, the young adult must satisfy one of five criteria. He/she must be

- Completing high school or another educational program that leads to an equivalent credential,
- Enrolled in an institution providing post-secondary or vocational education,
- Participating in a program or activity designed to promote, or remove barriers to, employment
- Employed at least 80 hours/month, or
- Incapable of complying with the educational or employment requirements because of a medical condition or disability.

[G.S. 108A-48\(c\)](#).

The Benefits

The purpose of the program is to help the now young adult successfully transition from foster care to adulthood. NC DSS §1201, XII.A. Services and benefits to meet that purpose involve

- **Ongoing Case Work** that includes a Transitional Living Plan, which is created and reviewed at quarterly case review meetings with the young adult's Transition Support Team (TST); monthly contact between the young adult and social worker; quarterly home assessments (unless the young adult is living in a dorm); and assistance with obtaining yearly credit checks. NC DSS §1201, XII.E.
- **Placement** in a home approved by the county department. The placement is not required to be a licensed foster home. It may be an approved dorm or semi-supervised housing arrangement when the county department or supervising agency provides monthly supervision and oversight to the young adult. [G.S. 108A-48\(d\)](#)
- **Foster care maintenance payments** at the standard rate (currently \$634/month). [G.S. 108A-49.1\(a\)\(3\)](#). These payments are intended to pay for "food, and shelter, clothing, personal incidentals, and ordinary and necessary school and transportation expenses." [10A NCAC 70B .0103](#). The payments may be made to the foster parent, placement agency, relative, or host family. NC DSS §1201, XII.C. The department may make the payments directly to the young adult if (1) it determines that is in the young adult's best interests, (2) financial management is a goal on the young adult's Transitional Living Plan, and (3) the department works closely with the young adult on budgeting. *Id.*
- **Medicaid coverage**, *Id.*
- **Educational grants/scholarships** to pay for tuition, fees, and books at a NC public community college or university. For more information, see [NC Reach](#).

Enrollment

The young adult and county department enter in a contract, which is a **Voluntary Placement Agreement** (VPA). NC DSS §1201, XII.C. The VPA is executed in the month the foster child turns 18 or when the young adult opts in to the program after his or her 18th birthday. *Id.* If the VPA was signed in the month the youth turns 18, there must be a new signature by the young adult after he/she turns 18. *Id.* The VPA becomes effective on the 18th birthday or if the young adult is already 18, when the VPA is executed. *Id.*

Mandatory Court Review

Timing

When a young adult receives extended foster care services, the district court must hold a review hearing within 90 days of the execution of the VPA. [G.S. 7B-910.1\(a\)](#). Additional review hearings may be held upon the written request of the young adult or county department. G.S. 7B-910.1(b).

Parties

The young adult and county department are the parties. G.S. 7B-910.1; [-401.1\(i\)](#). The young adult does not have a guardian ad litem. G.S. 7B-910.1(c). And, the statute does not provide for an attorney to be appointed to represent the young adult.

Jurisdiction

The review is not part of the underlying abuse, neglect, or dependency action because the court loses jurisdiction over that action when the child turns 18. [G.S. 7B-201\(a\)](#). As a result, it appears that this is a new action brought pursuant to G.S. 7B-910.1. However, no amendment was made to include the 7B-910.1 review hearing to the statute that specifically addresses exclusive original jurisdiction over certain actions involving minors. See [G.S. 7B-200](#). In applying the rules of statutory construction, one must consider legislative intent and interpret a statute in a way that avoids absurd consequences. *Person v. Garrett*, 280 N.C. 163 (1971). Given that the plain language of G.S. 7B-910.1 mandates a court review, it appears the court has jurisdiction to hear the review. What is unclear is (1) whether the review is a juvenile action despite appearing in the Juvenile Code and (2) how the action is initiated. Because a new action appears to be required, a county department may want to file a petition requesting a 7B-910.1 mandatory review of the VPA.

The Review Hearing

After considering the evidence, the court must make findings about the following factors:

- Whether the placement is in the young adult's best interests, and
- The services that have been or should be provided to
 - improve the placement, and
 - if relevant, further the young adult's educational or vocational ambitions.

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

The statute is silent on the court's authority to order any specific remedy. *Compare to* [G.S. 7B-910\(b\)](#). It is unclear if the court may order the continuation of or change in the placement and whether a finding by the court that a certain service should be provided is an order to provide that service.

Terminating Extended Foster Care Services

Other than the young adult turning 21, the statutes do not specifically address the criteria for when extended foster care may or should be terminated. See G.S. 131D-10.2B; 108A-48(b), (c). The statutes also do not address the procedure to terminate extended foster care.

The Foster Care 18-21 program requires the young adult to voluntarily participate by executing a VPA when he or she meets eligibility criteria. The young adult can opt out of the program. NC DSS

§1201, XII.G.

Presumably, the young adult must maintain his or her eligibility in the program by participating in an educational or vocational program, being employed, or having a medical condition or disability that prevents him or her from doing so. See G.S. 108A-48(c). The NC DSS policy states services must be terminated when the young adult no longer meets eligibility criteria. NC DSS §1201, XII.G. If a young adult loses eligibility, the policy provides for a 60 day grace period for the young adult to work with the county department to make reasonable efforts to become eligible. *Id.* If the young adult fails to do so, the policy directs the county department to seek a court review to determine if the services should be terminated. *Id.* However, the statute does not authorize the court to terminate the services. A court could make a finding that the young adult does not satisfy any of the required eligibility criteria.

The NC DSS policy goes further and states that services must terminate when the young adult does not meet the goals of the Transitional Living Program, violates the VPA (including being involved in criminal activity), or has left the placement for more than 14 days without prior approval and the court has terminated services. *Id.* When any of these events occur, the policy directs the county department to request a court review to determine if services should be terminated. *Id.* Under the policy, if the court terminates services, the department must provide a 30 day written notice to the young adult that the services will terminate. *Id.* Absent statutory authority, it is unclear whether the county department or court may terminate the young adult's participation in extended foster care on these grounds. If a court does terminate the services, the statutes do not address whether there is a right to appeal.