**

Commonwealth of Virginia

*Virginia Board for People with Disabilities*

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October 31, 2017

TO: Ruth Anne Walker, Administrative and Regulatory Coordinator

 Dept. of Behavioral Health and Developmental Services

FROM: Heidi L. Lawyer 

RE: Request for Stakeholder Comments on Initial Draft Revisions to DBHDS Regulations Following Periodic Review

1. [DRAFT Revisions as Result of Periodic Review: Ch.190 Regulations for Voluntary Admissions to State Training Centers](http://townhall.virginia.gov/L/ViewNotice.cfm?gnid=765)
2. [DRAFT Revisions as Result of Periodic Review: Ch.200 Regulations for Emergency and Respite Care Admission to State Training Centers](http://townhall.virginia.gov/L/ViewNotice.cfm?gnid=766)
3. [DRAFT Revisions as Result of Periodic Review: Ch.210 Regulations to Govern Temporary Leave from State Mental Health and State Mental Retardation Facilities](http://townhall.virginia.gov/L/ViewNotice.cfm?gnid=767)

Thank you, on behalf of the Virginia Board for People with Disabilities (The Board) for the opportunity to provide comments on the draft revisions to Sections 190, 200, and 2010. Our comments are minor but we hope they are useful.

**Voluntary Admissions to State Training Centers (12VAC 35-190)**

12VAC 35-190-21. Application for Admission

The Board recommends that in paragraph C1(4), the term *guardian* be added after family member.

**Regulations for Emergency and Respite Care Admission to Training Centers (12VAC 35-200)**

12VAC 35-200-10. Definitions

Less Restrictive Setting. The Board recommends that the term “Less Restrictive Setting” be changed to “*Least Restrictive Alternative.*” which is defined in §16.1-336 of the Code of Virginia and used in both Title 16.1 and Title 51.5 of the CodeIn the alternative, the phrase “*Most Integrated Setting*” could be substituted, which is consistent with the integration mandate of the Supreme Court’s *Olmstead* decision. We also recommend that the definition be reviewed in light of individual civil and human rights and balance that focus with protection from harm to self or others.

Respite Care. The term mental retardation was inadvertently left in this definition. The Board appreciates that this language has been changed to intellectual disabilities in each of the chapters.

12VAC 35-200-20. Respite Care Admissions

The Board is concerned that “a current psychological evaluation” that accurately reflects an individual’s present level of functioning at the time that emergency respite is needed may not be available and that an older evaluation may not accurately reflect the individual’s current needs for respite. The Board recommends, therefore, that documentation evidencing an individual’s current level of functioning be allowed to satisfy the application requirements in lieu of a psychological evaluation in instances where the most recent available evaluation does not evidence the individual’s current level of functioning.

The Board recommends that the term *guardian* be added to sub-item 9 under application requirements.

12VAC 35-200-30. Emergency Admissions

C. Add the words *as to* after CSB on the third line, i.e., shall inform the CSB *as to* whether the individual…

**Regulations to Govern Temporary Leave from State Facilities (12VAC 35-210)**

12VAC 35-210-20. Definitions

The definition of “responsible person” includes a reference to a “legal guardian,” which is also listed in the definition for “authorized representative.” Neither guardian nor legal guardian is defined. The other two regulations under review (35-190 and 35-200) defined “guardian,” not “legal guardian.” The regulations should be consistent among each other. If legal guardian is the preferred term, it should be utilized throughout.

12VAC 35-210-30 General Requirements for Temporary Leave

Section C states that individuals who are granted a day pass, family visit or trial visit may be “placed in the care of a … person determined capable by facility director, or AR.” The Board is concerned about the lack of any objective criteria, or other guidance or processes for determining that a person is “capable.” It is also unclear what “capable” means in this context. This section also includes another reference to “legal” guardian.

12 VAC 35-210-50. Trial Visits

Under A(2), the Board recommends changing the language to the following:

“The individual’s *essential support and supervision needs and supervision”*

12VAC 35-210-60. Family Visits

In number B (3), it indicates that when planning visits, facilities shall “consider whether the visit has an impact on the treatment or training schedule for the individual and make appropriate accommodations.” While inclusion of “treatment” is understandable, the term “training schedule” seems archaic with respect to its use regarding training center residents in particular. The Board recommends consideration of an alternate term, e.g., c*onsider* *whether the visit has an impact on the individual’s treatment, education, or work related activities and make appropriate accommodations*

12VAC 35-210-90. Failure to Return to Training Centers

Section E states that if no emergency or unforeseen circumstances exist and the responsible person does not agree to return to the individual to the training Center as scheduled, the facility director shall discharge the individual. . Written notification is then sent to the AR. This section is concerning to the Board for two reasons: First, as currently written in 12 VAC 35-210-30, the responsible person may be anybody that the facility director or AR determined “capable.” If the failure of this responsible person to return an individual as scheduled is grounds for discharge from the facility, then the Board strongly urges significant restrictions on who may serve as the responsible person. Secondly, if the responsible party is not the AR, then the AR should be immediately informed of the failure of the responsible person to return the individual to the Training Center as scheduled, and notified in writing prior to the individual being discharged, not after.

Thank you again for the opportunity to provide input. Please feel free to contact me should you have any questions about our comment at Heidi.Lawyer@vbpd.virginia.gov or 804-786-0016.