STATE OF GEORGIA

Division of Family and Children Services

Nathan Deal
Governor

Bobby D. Cagle
Director

M E M O R A N D U M

TO: Regional and County Directors
Resource Development Teams
Child Placing Agencies

FROM: Dianne Kelly, Foster Care Services Section Director

Date: March 17, 2016

RE: Prospective and Veteran Caregivers and the Americans with Disabilities Act (ADA)

This memorandum outlines steps which are effective immediately that resource developer's must take in assessing caregivers with disabilities and / or who request an accommodation or modification in order to participate or continue participation in the foster care and adoptions program.

In December 2015, the Division of Family and Children Services reached a settlement agreement with the U. S. Department of Health and Human Services, Office of Civil Rights to resolve alleged civil rights violations identified in a complaint whereby a prospective caregiver's application was denied based on her disability in violation of Section 504 of the Rehabilitation Act of 1973, as amended, and Title II of the Americans with Disabilities Act of 1990, as amended.

As a condition of the settlement agreement, the Division is required to implement procedures to ensure that prospective and current caregivers who are determined to be a "qualified individual with a disability" are not excluded from participation in, or subject to discrimination and that when necessary, reasonable accommodations or modifications are provided that allow for their participation in the foster care and adoptions program that do not fundamentally alter the nature of a service, program, or activity or create an undue financial or administrative burden.

Currently, the Division is in the process of developing policies and procedures to fully address the settlement agreement. In the meantime however, we must remain in compliance with applicable disability laws.

Individualized Assessment

At any time during the approval process or during a caregiver's tenure that an individual makes it known that they have a disability or if DFCS has reason to believe that the individual has a disability, an Individualized Assessment (IA) must be conducted. Individuals with disabilities must be assessed on a case-by-case basis consistent with facts and objective evidence. They must be provided opportunities to benefit from or participate in child welfare programs, services,

and activities that are equal to those extended to individuals without disabilities. It is important to note that this does not mean lowering standards for individuals with disabilities; rather, in keeping with the requirements of individualized assessment, services may be adapted for an individual who has a disability to ensure that they have equal access to participate in the program.

The Division is required to make reasonable accommodations/modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless it can be demonstrated that making the modifications would result in a fundamental alteration in the nature of a service, program, or activity or create an undue financial or administrative burden. The determination of whether a modification is reasonable depends on the specific facts of each case and may not be based on generalizations and stereotypes.

Participants have the right to request a reasonable accommodation. The request may be made orally or in writing. The Reasonable Accommodations Request form will be used to document the request. If the request is received orally, the DFCS worker must document the request on the form. Questions and requests for reasonable modifications/accommodations made by or on behalf of disabled applicants and participants in the foster care and adoption programs should be directed to the Regional ADA/Section 504 Coordinator. Before denying a request for Reasonable Accommodation, the county office must staff the case with the Regional ADA/Section 504 Coordinator and the Caregiver Recruitment and Retention Unit Manager, Candis Jones (Candis.Jones@dhs.ga.gov) for concurrence prior to proceeding. If the Regional Coordinator concurs in the denial, that decision must be forwarded to and reviewed by the Foster Care Services Director. If technical assistance is needed, the Regional Coordinators may contact DFCS' ADA/Section 504 Coordinator at the State Office. Technical assistance may be requested at any time during the Individualized Assessment process.

Direct Threats to Health and Safety

A key provision of the ADA is the prohibition against imposing or applying eligibility criteria that screen out or tend to screen out individuals with disabilities, unless the criteria can be shown to be necessary for the provision of the services. A direct threat to the health or safety of others are factors that can be applied to justify the use of disability-related screening criteria for prospective adoptive and foster parents. Direct threat is defined as a significant risk of harm to the health or safety of others that cannot be eliminated by modifications in policy, practice, or procedures. The Division is not required to permit an individual to participate in or benefit from a service when "that individual poses a direct threat to the health or safety of others." When "direct threat" is the justification for the screening out of individuals with disabilities, the Individualized Assessment must include the following:

1. Current medical evidence or the best available objective evidence in determining:
    a. The nature, duration and severity of the risks;
    b. Probability that potential injury will occur; and
    c. Whether reasonable modification in policies, practices, or procedures will mitigate the risk.
2. The actual abilities and inabilities of the prospective adoptive or foster parent.

SHINES Documentation Procedures

The receipt date must be noted on the Reasonable Accommodations Request form and the document uploaded into external documents in the Person Information Page under the heading

“ADA R/A Request”. The Reasonable Accommodations Acknowledgment form must be uploaded to external documents under “ADA/RA Response”.

Once the Individualized Assessment is completed it must be uploaded to external documents in the Foster/Adoptive Home Information Page under the heading “ADA Individualized Assessment".

Upon conclusion of the matter, a letter signed by county director must be sent to the caregiver informing them of our decision. The letter must include a statement documenting the basis of the denial, if applicable and whether reasonable modifications could have allowed the applicant to participate or continue participating the program. Before taking action, which might adversely affect the ability of applicants and participants with disabilities to participate in the foster care and adoption program, the DFCS worker will seek approval from the County Director of the local DFCS Office. The Region’s ADA/Section 504 Coordinator (or the Region’s Lead FPS) will serve as the second level reviewer/approver in cases where the applicant/participant has a known disability and is denied. If the Regional Coordinator approves a denial involving a foster parent applicant/participant who has a known disability, that decision must be forwarded to and reviewed by the Foster Care Services Director. If technical assistance is needed, the Regional Coordinators may contact DFCS’ ADA/Section 504 Coordinator at the State Office.

The final decision letter must be uploaded to external documents in the Foster/Adoptive Home Information Document Class under the heading Type “ADA/RA Offered". If any subsequent communications regarding the request occur, including emails it must be uploaded to external documents under the heading “ADA/RA DFCS Response.”

Child Placing Agencies
CPAs must create comparable procedures to ensure that their prospective and current program participants are likewise protected under applicable disability laws and that all Reasonable Accommodation requests and responses are documented.

Attached are the forms referenced in this memorandum. If you have any questions, please contact me at Dianne.Yearby@dhs.ga.gov.

Attachments:
ADA Complaint Form 724
Individualized Assessment Form
Reasonable Accommodations Request Form
Reasonable Accommodations Request Acknowledgment Form
ADA SHINES Enhancements Instructions
Regional ADA/Section 504 Coordinator List

cc: Ginger Pryor, DFCS Deputy Director, Child Welfare
George Dean, DFCS Associate General Counsel
State Office Staff