

Involving Children in Court Proceedings Related to Foster Care and Adoption

Improving Outcomes for Children
and Families

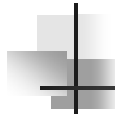
November 5, 2009

Some of the information provided in this presentation came from work done for the
Administrative Office of the Supreme Court of South Carolina.

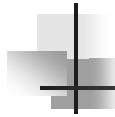


Why Are Courts Involved in Child Welfare Cases?

- Federal Legislation
- 1980
 - Adoption Assistance and Child Welfare Act
 - States take federal \$\$ for child welfare
 - State Courts oversee quality services to families
- Mid 1990's
 - Federal Funding for the Victims' Act Model Courts & Court Improvement Project (CIP)
- 1997- Adoption and Safe Families Act (ASFA)

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- 2005 – Federal Deficit Reduction Act
 - State courts & state child welfare agencies are to collaborate & cooperate
 - 2006 - Safe and Timely Interstate Placement Of Foster Children Act – Public Law 109-239
 - Receiving state required to complete the ICPC home study process within 60 days


Child and Family Service Reviews

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- The CFSR process was developed in Federal Legislation
 - What is it? -A review of state child welfare process and procedure through
 - Onsite review of 65 cases in 3 jurisdictions – both in home and foster cases
 - Stakeholder interviews
 - A look at statewide data from Agency computer system
 - A look at state court process and procedures involving these cases



CFSR Areas for Onsite Review

- Safety
 - Outcome 1 – children protected from Abuse and Neglect
 - Outcome 2 – children are safely maintained in their homes whenever possible and appropriate
- Permanency
 - Outcome 1 – Children have permanency and stability in their living situations

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- Permanency (con't)
 - Outcome 2 – the continuity of family relationships and connections is preserved for children
 - Well-Being
 - Outcome 1 – families have enhanced capacity to provide for their children's needs




- Well-Being (con't)


- Outcome 2 – children receive appropriate services to meet their educational needs
- Outcome 3 – children receive adequate services to meet their physical and mental health needs





How Can Children in Court Help Judges in Making Best Decisions?


- Safety Outcome 1 – Assesses how quickly and thoroughly the agency investigated complaints
 - What can a child tell you about this?
 - This can help with “**Reasonable Efforts**” findings
 - Could agency have avoided bringing the child into care through quicker action?

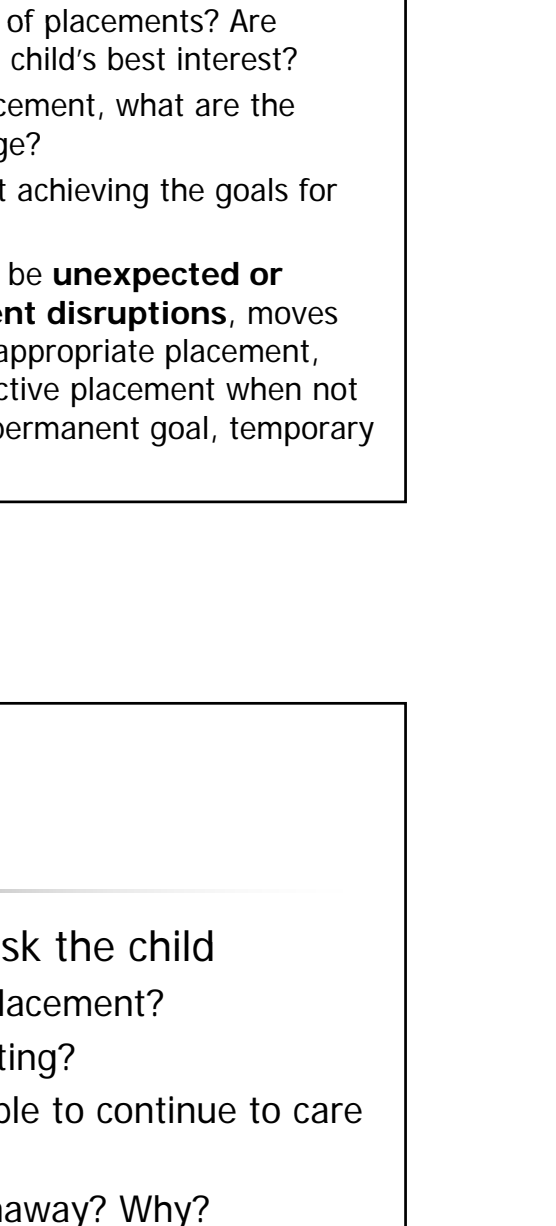
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- And your “**Contrary to the Welfare of the Child**” findings
 - Is there a better place for the child to be?
 - How does agency prevent **Repeat Maltreatment**?
 - Applies to any child in the family – in care or not
 - You have oversight of children who may not be in care – example – sister of a truant child
 - Even if a child comes into care & others do not
 - All children at home under a child protective order
 - Children in Care no matter where they are


- 
- Repeat Maltreatment (con’t)
 - What is agency doing on an ongoing basis to ensure the safety of each of these children?
 - Checks of the homes
 - Separate meetings with the children and foster parents and others in home
 - What could the child tell you if s/he were in court?

- 
- Safety Outcome 2 –
 - What services are being provided to protect children in the home and prevent removal or re-entry into foster care?
 - The court could get the same information from the child as with Safety Outcome 1
 - If it is about the problems of a child that **may cause him/her to come into care**, Court should ask about mental health, education-related, or behavioral related services being provided the child

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- **One area of inquiry** is about child safety during visitation by parents or other family members
 - Was visitation sufficiently monitored?
 - Were unsupervised visits allowed when not appropriate?
 - What does the child say about the visits and how they went?

- 
- What about the stability of placements? Are changes in placement in child's best interest?
 - If more than one placement, what are the reasons for the change?
 - Are changes aimed at achieving the goals for the child?
 - **Bad changes** would be **unexpected or undesired placement disruptions**, moves because child is in inappropriate placement, moves to more restrictive placement when not essential to achieve permanent goal, temporary placements, etc.

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- Some questions to ask the child
 - Any problems with placement?
 - Is it a temporary setting?
 - Is care provider unable to continue to care for child? Why?
 - Have you been a runaway? Why?




- Setting of Permanency Goals


- What is/are the **goal(s)**?
- Are they clear in the written plan?
- Did the child participate in developing the plan?
- What does s/he have to tell you about the plan?
 - Has the GAL met with and talked to him/her?



- Is Permanency Goal appropriate?

- If goal is APPLA, agency needs to explain to court why others were excluded
- What does the child have to say about the other goals that were excluded?

- 
- Are concerted efforts being made to achieve goal in a timely manner?
 - Reunification, Guardianship, Permanent Placement with Relatives
 - The child's input is critical here
 - S/he can tell you about services s/he is receiving
 - It allows the child to feel and be more included in decisions that impacts his/her life

- 
- What kind of services?
 - Did Agency assess for independent living skills?
 - Is child receiving appropriate independent living skills services – post high school, life skills classes, employment training, financial planning skills training, transitional living services?
 - Does child have an independent living worker?
 - Did agency move to this goal too quickly?
 - Once APPLA is goal, Court rarely reconsiders it.
 - You should




- Permanency Outcome 2

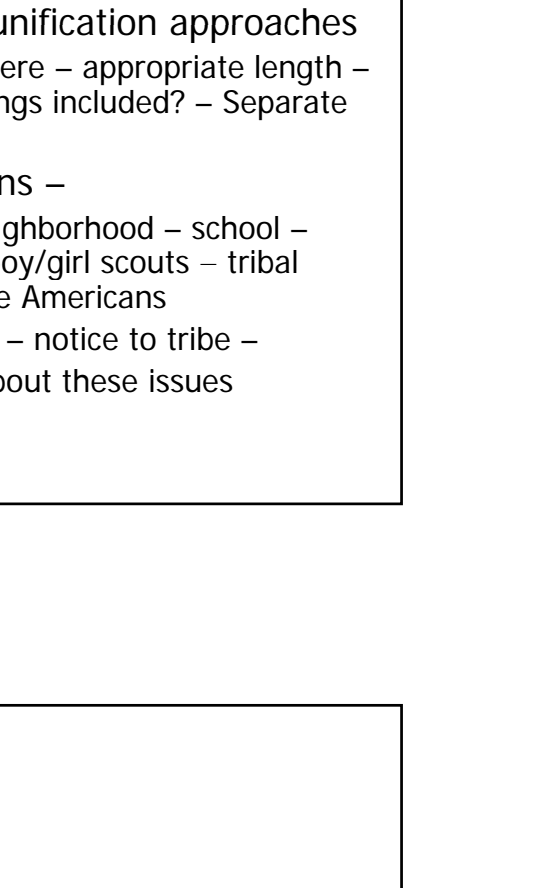
- How close is foster placement to family?
 - Importance of face to face contact by child and parent
- Are siblings kept together?
 - Why, if they are not? Are reasons valid? Lack of foster homes is not one. Safety, large number (5 or more) are, as are needs of one of kids



- Visitation by child with parents and siblings

- Court needs to ask questions here as this issue has been found to be **a good predictor of success in reunification**
 - How often? The more the better
 - Quality of visits
- If visitation not possible, what did agency do to promote continuity of relationships with parents and siblings?

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- More visitation as reunification approaches
 - Comfortable atmosphere – appropriate length – unsupervised? – Siblings included? – Separate visits with siblings?
 - Preserving connections –
 - Extended family – neighborhood – school – teams – groups like boy/girl scouts – tribal connections for Native Americans
 - For Native Americans – notice to tribe –
 - Court needs to ask about these issues

- 
- Relative Placements
 - Agency efforts to identify, locate, and evaluate relatives of both parents – Including ***Fathers***
 - What does the child know about his/her father and paternal relatives?
 - Relationship of child in care with parent
 - Did agency promote, support, and/or maintain positive relationships between child and mother, father, & other primary caregiver(s) from whom child was removed
 - More than just visitation



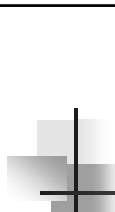
- Examples

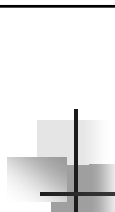
- Did parent participate in school activities, case conferences, doctor appointments, after school sports, etc.
- Were therapeutic opportunities between parent and child provided where appropriate?





- Well-Being 1

- Did agency assess needs of parents, child, and foster parents upon entry into foster care and on-going to ID services needed to achieve case goal and address issues related to agency involvement with family and then provide them?
 - Court can ask questions here about child and to the child

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- Were appropriate services provided to meet the identified needs of the child?
 - Examples would be mentoring programs, recreational services, teen parenting education, preparation for adoption or other permanency goals, improving social skills or self-esteem

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- Were child and family involved in case planning?
 - Before the fact not after agency decided on the plan
 - Must be age appropriate
 - Did child help in selecting possible adoptive parents? – may reduce failed adoptions
 - If not involved, why not? Court should ask


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- Caseworker visits with child
 - How often?
 - What was quality of visits – face to face?
 - Where did they take place? At home, school, parks, over lunch?
 - Did worker talk with child alone?
 - What if child in another state? Who does it? Send Guardian ad Litem?

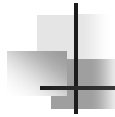
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- Well-Being Outcome 2 –
 - Educational needs of child
 - Were they assessed at initial contact and on an ongoing basis and were needs addressed?
 - What does child say about this?
 - For young children – developmental delays
 - What school records were considered? Teachers contacted?

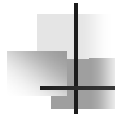


- Well-Being Outcome 3

- Were the physical health and dental health of the child assessed and addressed?
 - What does child say about this?
 - What services provided? Annual physicals? Annual dental check ups? Test for lead?
 - Were foster parents informed of needs to help address them?

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- Were the mental/behavioral health needs of the child assessed and addressed?
 - How?
 - Substance abuse should be addressed here

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- Is notice of hearings properly provided to **parents, foster parents, pre-adoptive parents, and children**?
 - By whom? Is proof of service in court file?
 - Are above people given an opportunity to be heard in court?
 - Are court hearings set at a time that meets child's schedule – after school?

- 
-
- Judge Stephen W. Rideout (Ret.)
 - swrideout@comcast.net
 - 703-655-6149

Youth in court: Bridging the Gap

Prepared by: Bill Stanton, Federal
Children's Bureau Consultant

CFSR : YOUTH IN FOSTER CARE : What the youth say

- Second installment of an ongoing report.
- Voices of the youth themselves.
- A look at what they don't like, what they like,
and what they recommend to the system.

LIVING IN FOSTER HOMES

ABOUT LIVING IN FOSTER HOMES

They don't like it when . . .

- Foster parents are not well-trained.
- Foster parents don't really care about them .
- Caseworkers don't try to find out what is really going on in the foster home.
- They have to stay in homes that they think are not safe or are not good for them.

They like it when . . .

- Foster parents make them "feel like family."
- Foster parents make an effort to bond with them and listen to them.
- They can participate in foster parent training.

“It is almost like we are merchandise that can be returned to Wal-Mart if our foster parents don’t want us anymore”.

The system should . . .

- Train foster parents on how to treat foster children “like family.”
- Train caseworkers to understand the signs of abuse.
- Give youth opportunities to participate in foster parent training.

The Court should . . .

- Give youth more say in where they live.
- Monitor foster homes more closely.
- Ask youth without the caseworker present, why they are running away from placement

LIVING IN GROUP HOMES

ABOUT LIVING IN GROUP CARE

They don't like it when . . .

- Group homes rules interfere with their ability to have jobs or enjoy leisure time.
- Group home staff assume that they are in the group home because they are "bad."
- Their complaints about the group home are not taken seriously by group home staff or by their caseworkers.

They like it when . . .

- They feel safe living in the group home setting.
- They receive important services while living in group care.

"No one ever asked me why I ran from placement. Perhaps if they did, they would find out that I was abused in my placement more than my real home".

The system should . . .

- Provide trial visits or orientation visits for youth who are transitioning into group care.
- Provide more training to group home staff about how to work with foster care youth.
- Have caseworkers make unannounced visits to group homes.

The Court should . . .

- Make sure the group home tells the youth when their court hearings are.
- Transport them to court.
- Listen to them when they say they are concerned about their safety in the group home.

PLACEMENT CHANGES

ABOUT PLACEMENT CHANGES

They don't like it when . . .

- They move too much.
- They are not allowed to take all of their things when they move.
- They are moved to new placements without being told why.
- They are moved to new placements without adequate notification.
- They are moved to inappropriate placements.
- They have to change schools and friends when they are moved.
- They put their stuff in black garbage bags.

They like it when . . .

- They are in the same foster home for a long time.
- Foster parents make extra efforts to help them attend their former schools or see friends after a move.
- They can stay in the same school and keep the same friends.

“It hit me, now I know what a foster child must feel like”.

The system should . . .

- Improve matches between foster parents and kids.
- Have trial visits in group and foster homes.
- Have foster care placements that are specialized for teenagers.
- Train caseworkers to listen to the youth’s concerns about placements and resolve things.
- Provide transition planning.
- Be sure that foster parents and caseworkers understand the importance of extracurricular activities.

The Court should . . .

- Train Judges to listen to the youth's concerns about placements and resolve things.
- Ask questions before they sign the order to move a youth to another placement.
- Don't expect youth to get attached to their foster parents after they have been moved 7 times.

CASEWORKERS

ABOUT THEIR CASEWORKERS

They don't like it when . . .

- Caseworkers don't visit them and don't return their calls.
- They are always getting new caseworkers, but no one tells them or helps them transition.
- Caseworkers visit for just a few minutes.
- Caseworkers are "too busy" so important case matters do not get done.
- Caseworkers don't know about services available for youth or don't help youth access services.

They like it when . . .

- Caseworkers make them feel that they care about them.
- They have the same caseworker since they entered foster care.
- Caseworkers ask for input from the youth and value their opinions.
- Caseworkers are well-informed about the services available for youth.

"90% of my communication with the caseworker was by e-mail or voice mail."

The system should . . .

- Give caseworkers smaller caseloads so that they are not constantly “jumping from fire to fire.”
- Give youth the opportunity to change caseworkers if the caseworker and youth do not have a good relationship.
- Train caseworkers on how to talk to children about their families.
- Make sure that caseworkers understand that it is important for teens to have a personal relationship with them.
- Help youth transition when there is a change in caseworker.

The Court should . . .

- Ask the youth how many times they have seen the caseworker and not always believe the caseworker.
- Tell caseworkers that they need to spend more time with the youth.

SIBLINGS

ABOUT CONNECTIONS WITH SIBLINGS

They don't like it when. . .

- Caseworkers leave it up to them to make visit arrangements.
- The adoptive families of younger siblings won't let them see their older siblings.
- Caseworkers don't help maintain contacts with siblings.
- They are separated from siblings or not allowed to see siblings without any explanation given.
- The only contacts they have with siblings are supervised.

They like it when . . .

- They are allowed to visit with older siblings not in foster care.
- They can see siblings frequently and in unsupervised visits.
- They can see siblings who are adopted.

The system should . . .

- Pass legislation regarding sibling visitation rights.
- Arrange for regular planned sibling visitation when siblings cannot be placed together.

The Court should . . .

- Ask about sibling visitation
- Court order the agency to arrange visitation between siblings even if they are not in care.
- Ask the youth when they lost saw their siblings.

PARENTS AND EXTENDED FAMILY

ABOUT CONNECTIONS WITH PARENTS AND EXTENDED FAMILY

They don't like it when . . .

- They are placed far away from their parents and community.
- Parents are not provided with transportation assistance for visits.
- Visits with parents are used by foster parents and group home staff as a "reward" for good behavior or as a "punishment" for bad behavior.
- They can't visit with parents if parental rights are being terminated.
- They are told that they cannot have contact with a parent, but no explanation is given.
- All visits with parents are supervised.
- They are not given information about their families.

They like it when . . .

- They are placed in close proximity to their parents and can see parents and relatives frequently.
- They are protected from parents when that is necessary.
- Foster parents take extra measures to support parent-child contact.
- They are placed with a relative or a close family friend.

The system should . . .

- Provide services such as counseling to build better parent-child relationships.
- Recognize that it is okay for teenagers to visit with their parents even if the parents are not adhering to case plan requirements, such as still using drugs.
- Be sure that children in foster care are informed about the “rules” that govern visitation.
- Explore relatives as placement options and explain to youth why a particular relative placement did not work out.

The Court should . . .

- Not allow the foster parents and group home staff to take away visitation as a “punishment” for bad behavior.
- Ask the youth if they have any relatives that they would like to live with.
- If the judge is not going to allow the youth to visit with their parent, explain why to the youth.

INDEPENDENT LIVING AND TRANSITIONING TO ADULthood

ABOUT INDEPENDENT LIVING AND TRANSITIONING TO ADULthood

They don't like it when . . .

- Caseworkers don't tell them about available independent/transitional living services or help them access services.
- There are delays in getting stipends or resources they have earned or been promised.
- They can't get a job because they have no transportation and are not allowed to have a driver's license.
- They don't feel prepared for independent living and worry about being homeless.

They like it when . . .

- They get funds for college from the Educational Training Voucher program.
- They get classes and services to help them prepare for independent living.
- Their ILP worker maintains frequent contact with them and makes them feel cared about and that they are on the right track.

“Being a foster child in this state is like having Wall Street parents and a real bad Nanny”

The system should

- Provide youth with IL services as soon as they request them.
- Provide youth with IL services as early as possible.
- Help youth get and maintain jobs by letting them get their driver's licenses.
- Make sure caseworkers are aware of the services and resources available to youth.
- Develop a mentoring program or some way of ensuring that there is a committed adult for youth aging out of foster care.
- Meet to discuss emancipation at least once a month to be sure that the youth is ready to age out of the system.

The Court should . . .

- Make sure the youth has someone to connect with after they leave care.

SCHOOL

About school

They don't like it when ...

- They have to change schools because they are moved to a new placement.
- They have to go from small educational settings in group homes to larger classrooms in public school settings.
- Teachers have low expectations because they are in foster care.

They like it when . . .

- Caseworkers and other adults in their lives advocate with the school system on their behalf.
- They can attend the same school while in foster care.
- They are able to get tutoring services.

The system should

- Encourage youth to stay in school and stay focused on school.
- Make sure that youth can stay in the same school district whenever possible.
- Improve the system for enrolling in a new school, including timely transfer of records.
- When the child must change schools, provide support in transitioning to a new school.

The Court should . . .

- Order that we stay in the same school.
- Ask the youth about their school work.
- If we move schools, make the schools accept our credits.
- Inform group homes that the youth needs to go to school.

COURTS AND THE LEGAL SYSTEM

About the courts and legal system

They don't like it when . . .

- They are not notified about court hearings.
- They rarely see or talk to their GAL except just before a court hearing.
- They are told by caseworkers that they shouldn't go to court.
- They attend a court hearing but are not allowed inside the courtroom.
- They attend a court hearing, but the judge doesn't talk to them.
- They are not given information about how to prepare for a court hearing,
- They can't find out what happened in court if they did not attend.
- They feel powerless over what happens to them.

They like it . . .

- They can write letters to the judge and feel like their views are heard by the judge.
- They go to court and the judge asks them how they are, how things are going, what they need, and if there is anything they want to say.
- When they have a supportive GAL who takes time to know them and tries to help them.

“Are they really worried that attending court will be harmful to me or are they worried it will be harmful to the judge?”

They think the Court should . . .

- Require youth to go to a court hearing at least once.
- Allow youth to speak in court and to speak directly to the judge on a regular basis.
- Provide youth with orientation and preparation prior to going to a hearing.
- Assist youth in preparing a written statement when asked by the court to do so.
- Make sure that the attorneys who are supposed to represent them take the time to get to know them.

BEING “IN THE SYSTEM”

“We just want to be treated like normal kids. I went to the prom and I was drinking. I knew I should not have been. I came home late and was greeted by a police officer. They removed me from that home and placed me in drug treatment. If it was the foster parents real kid. Would they have done the same thing? Wouldn't they have just grounded me or found a way to punish me. But because we are foster kids, as soon as we do something wrong, it is like foster parents can get rid of us and get a replacement. We on the other hand get moved and labeled as a problem”

About being “in the system”

They don't like it when . . .

- They don't know what their permanency goal is or what is in their case plan.
- They know what the goal is, but are not given any information on how or when that goal will be achieved.
- There is no adequate transition plan for them at the time of aging out of foster care.
- They don't know what the rules are.
- There are changes that affect them but there is no explanation for the changes.
- **They can't do things like other teenagers.**

About being in the system

They like it when. . .

- Caseworkers explain the case plan to them and involve them in the process.
- They get funding to support extracurricular activities such as the prom, sports, and high school graduation expenses
- There is a Youth Advisory Council that advocates for them with the system.
- They can attend annual foster care youth conferences and local youth advisory meetings and workshops to connect with other youth in foster care.

The System should . . .

- Have a pamphlet available to children and youth about the resources and services that are available to them.
- Have a pamphlet about the “rules.”
- Create a youth advisory council, if one has not already been established.
- Help them get driver’s licenses.

ABOUT OTHER THINGS

About other things

About physical health care:

- Physical health needs generally met
- Concerns expressed about orthodontics
- Concerns about health care after aging out.

About adoption:

- Although many youth said that they would not consider adoption, almost all of them said that this option had never been clearly explained to them.
- Some youth said that when they were first asked about adoption, they said no, but then they were never asked again.

“Adults attending adoption recruitment events always want the puppies. They always go for the little kids first or the cutest”

“ I don't want to be adopted because my caseworker told me that if I was adopted, I could never see my mother again. She also told me that if I died, my mother couldn't come and get my things”

About mental health services

- Many youth reported that they attend counseling regularly and that counseling is a familiar requirement of their case plans.
- Youth expressed concern about having to take psychotropic medications.
- Youth would like more information about their mental health treatment..
- They would like to have more of a say in discussing their medication management.

What kids want: Crosscutting themes

- They want to feel that someone cares about them.
- They want caseworkers and other adults in their lives to listen to them.
- They want a voice in what happens to them and to other children in foster care.
- They want to have a say in decision-making about their lives, and they want their opinions to be valued.

What kids want (continued)

- They want better communication with the agency about the rules and regulations of foster care and what is going on in their case.
- They want to do things like regular teenagers.
- They want to be prepared to fend for themselves when they leave foster care, by having a drivers license, having access to health insurance, and having support for higher education (tuition waivers, assistance getting into college, etc.)

ABOUT HOPE

Coach Berkowsky

“Don’t let the fact that you are a foster child become your excuse for failure but rather what drives you to succeed”



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Helping Lawyers Help Kids

IN PRACTICE

Seen and Heard: Involving Children in Dependency Court

by Andrea Khoury

All I ever wanted was to be heard and not just dismissed.

—Youth in foster care

Every significant decision in the child’s life, from entry into until exit from foster care, is in the hands of the court. Yet in many parts of the country, these vulnerable children have only limited opportunity, if any, to participate in court proceedings that so profoundly affect their future.

—Miriam Krinsky, Executive Director, Home At Last

Major national child welfare organizations agree that youth should participate to some extent in their child welfare hearings. However, little guidance exists to help professionals involve children in court proceedings in meaningful ways. This article addresses the following issues:

- How and to what extent should children participate.
- How attorneys, judges, and other child welfare professionals should encourage and facilitate children participating.
- How the system, made up of courts, agencies, and other child welfare professionals, should change to make it possible for children to participate.
- How to make the child welfare legal system more meaningful to youth by involving them in court.

This article includes an overview of national policies addressing children’s participation in court,

followed by discussion of the benefits of such participation. It then offers concrete suggestions for reforming practice, policy, and systems to better engage youth in the court process.

Policies of National Judicial and Bar Associations

National judicial and bar associations addressing this issue have uniformly emphasized the importance of youth appearing in court in child abuse and neglect cases. For example:

- The National Council of Juvenile and Family Court Judges published *Resource Guidelines Improving Court Practice in Child Abuse and Neglect Cases* in spring 1995. These *Guidelines*, which were also endorsed by the ABA and the Conference of Chief Justices, discuss who should and may be present during each major type of hearing in a child abuse and neglect case.¹

- The American Bar Association (ABA) approved standards for representing children in abuse and neglect cases² that suggest children should be present at significant court hearings. For example, the commentary explains that having a youth in court emphasizes for the judge and all parties that this hearing is about a child.³
- The National Association of Counsel for Children (NACC) adopted similar standards in 1999. Their standard for children’s participation in court mirrors that of the ABA. At significant court hearings, children in most circumstances should be present.⁴
- The Pew Commission on Children in Foster Care report, *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care*, recommends that courts should be organized to enable children and parents to

(Continued next page)

What’s Inside:

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A Guide to Mental
Health Services

ABA Child Law PRACTICE

www.childlawpractice.org

ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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participate in a meaningful way in their own court proceedings. The Commission states that children benefit when they have the opportunity to actively participate in court proceedings as does the quality of decisions when judges can see and hear from key parties.

- The *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham* state that children should be included in their proceedings unless they choose not to or the court finds it harmful to the child to be present.⁵ Judges should also encourage youth to participate in the courtroom.⁶

What's Happening around the Country

Many courts assume that youth should not be present in court, except in limited circumstances. Home At Last, a national outreach and education partnership headed by the Children's Law Center of Los Angeles and supported through a grant by The Pew Charitable Trusts, conducted a national study of participation in court by foster youth. Entitled *My Voice, My Life, My Future*, the Home At Last survey reports that an overwhelming majority of youth respondents stated they attend court only some of the time (73%), followed by never (29%), most of the time (20%), and always (18%).⁷ These results were based on foster youths' self reports.

The majority of youth who completed the Home At Last survey indicated that when they did attend court, it was helpful. The youth appreciated their involvement, which ranged from being informed about the hearing, to attending the hearing, to speaking to the judge. Satisfaction from attending court hearings did not rely exclusively on the youth speaking to the judge. Being

allowed to attend made youth feel that they were more informed about their life and the experience was worthwhile.⁸

However, some youth did not have positive experiences. Their responses ranged from feeling they were ignored to being bored. Some felt that they had to miss other important activities in their life for court, such as school.⁹

Some states address youth's participation in their state statutes. For example:

- Kansas directs the court to hear testimony of a youth 14 years old or older if the youth requests it and is of sound intellect.¹⁰
- Minnesota states that children have the right to participate in all proceedings.¹¹
- New Mexico allows a child 14 and older to be present in court and requires the court to find a compelling reason and state the factual basis if the child is to be excluded.¹² A child under 14 is permitted to be in court in New Mexico, unless the court finds it's in the best interest of the child to exclude her.¹³
- Florida only restricts a child's presence in court if the court finds the child's mental or physical condition or age is such that appearing in court is not in the child's best interests.¹⁴ Additionally, Florida specifically addresses a child's participation at hearings before the child's 18th birthday to address the issue of independent living transition services.¹⁵
- Virginia requires notice and the ability of a child 12 years of age or older to participate in foster care review hearings.¹⁶
- California lists a youth's ability to attend court hearings and speak to the judge as one right for children in foster care.¹⁷
- Michigan requires youth over age 11 to be notified of review,

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permanency, and termination of parental rights hearings.¹⁸

In the New York City Family Court, the administrative judge issued a policy requiring that youth 10 years of age and older appear in court regularly.¹⁹ The policy leaves many of the details up to the trier of fact, but makes clear that the general rule is children 10 years of age and older make regular appearances (at least once a year) in court.²⁰ The policy also allows exceptions based on the case and the individual needs of the youth and family.

Benefits when Youth Participate

Attending court benefits both youth and the court. Youth have the opportunity to understand the process by seeing firsthand the court proceeding. They also develop a sense of control over the process when they actively participate. The court learns more about children than simply what is presented in reports.

Sense of control

When a youth is removed from his home, he generally has little control over when or why that occurs, where he goes, and what happens to his parents. Important things in his life are taken away, including his ability to make decisions. He generally is placed in a new home, goes to a new school, has to develop new friends, and has new parents and new siblings. All of these events are beyond

his control. He is told there will be a court hearing at which a judge, whom he may never have met, will decide if he will return home. Sometimes a child advocate identifies his needs and conveys his best interests to the court. If he is not in court, he may simply be told the outcome and either continue in his foster home or go back home.

If the goal of the child welfare system is to do what is in the best interests of the child, the child should have input. When a youth has adequate representation, she is informed of the process and her role. When a youth attends a court hearing, she senses the judge who is deciding her best interests has listened to her. Regardless of the outcome, youth have reported that simply being heard by the decision maker empowers them and gives them a sense of control over what is happening to them. They feel they have a part to play and can influence the outcome.

Understanding the process

In an ideal situation, the youth has good representation, the social worker regularly communicates with the youth, the birth parents are honest with the youth about the situation, and the foster parents are present in court and openly discuss the case with the youth. However, a youth may not fully understand what is happening without seeing it firsthand. The youth is told that critical decisions are made by a judge in court. Yet, in most instances

the youth is not involved in that component of the case.

When a youth attends court, he can ask his advocate questions about what is happening. He hears what the social worker says about his home, school, visitation with parents, etc. He hears what his parent(s) say about their progress. When the judge makes a ruling and discusses why she orders something, the youth hears it firsthand and can ask questions.

Information for the court

Many questions that the court will have about the case may be addressed by the child welfare agency's and child advocate's reports, the parent(s)' testimony, and other service providers' input. However, if the youth is present and the court has a question about how often the youth has seen her mother or how the youth is doing in school, the youth can provide the answer.

The youth makes the case more real and vivid for the judge. For example, the court may be deciding whether it is time to change the permanency plan to adoption because the parents haven't complied with the agency's family service plan. If the youth is in court, the court doesn't have to rely on the reports to see how long the child has been in care. The court can see that the child is getting older and needs permanency in her life. Indeed, the youth may say this directly to the judge. Even if the youth is not verbal, the court can observe how the youth appears and interacts with others.

If the youth is very young and cannot speak to the judge, being present in court will bring the case to life and help show the case is about a human being with wants, needs, desires, and hopes that should be considered.

When youth attend the hearing, the court is less likely to focus excessively on the parents' circumstances as opposed to the youth's

The best approach to children's participation in court is to have excellent representation of the child, whether it's by GAL, attorney, CASA or some combination. There must be a representative who will talk to the child before court, develop a relationship with the child, ensure that the voice of the child is heard in court, and if the child wants to attend make sure the child is present. The discussion of whether youth should be included in court hearings should be done on a case-by-case approach led not by a rule but by an interview with child and informed decision by counsel.

—Judge Leonard P. Edwards. (ret.)

needs. When only the parents attend court, the focus is on what they have and or have not accomplished. When the youth is present, there is equal attention on the youth and what the youth needs.

Policy and Practice Considerations

Regardless of how your jurisdiction views children's participation in court, a clear policy should be in place about when and how youth should attend court hearings. This policy should provide enough flexibility to accommodate the individual needs of each child, not impose rigid requirements.

Key issues to address

What are the youth's wishes?

Most youth have definite feelings about whether they want to attend court.

How old is the youth? Some states place age restrictions on youth attending hearings. If the youth is an infant, the court will gain insight from her demeanor, appearance, and personal interaction with her parents. An older youth can be an information resource for the judge.

What is the developmental level of the youth? Will the youth understand what is happening during the hearing?

Will attending court upset the youth? Abuse and neglect hearings can contain graphic details of abuse that may be troubling for the youth to hear. A youth may hear a judge reprimanding her parents for their behavior. They may hear things that they don't understand. Youth may be afraid of abusive parents and may suffer additional trauma if forced to confront them. Youth may be frightened to take a position contrary to their parents. The youth may also feel responsible for what the court orders. On the other hand, it may be therapeutic for youth to be

It's important to remember that we empower youth by including them in court hearings. They feel more invested and more involved and more likely to be successful. Even if the final order is contrary to what the youth wants, they feel that their voice was heard and have a better understanding of why a particular decision was made. Everything in foster care is taken out of their control (school, home, friends). In court and with their lawyer, they have a say in what happens. They have some control over their future and their life.

—Melanie Klein, Maryland Legal Aid Bureau

exposed to the realities of the situation.

Will attending court disrupt the youth's routine? Generally court proceedings occur during regular school hours. The youth may have to miss school. If hearings are postponed, the youth may have to miss multiple days. Youth may have sports and other extracurricular activities that may be disrupted. Yet this concern is not insurmountable. If one values youth participation, scheduling issues and conflicts can be addressed the same way we juggle other commitments in a youth's life, such as doctor or dentist appointments.

Will court be confusing or boring to the youth? Often multiple cases are scheduled for one day. Youth have to wait until their cases are called, sometimes for hours. Most courtrooms do not have child-friendly waiting areas and the youth have to bring something to do while they wait. Also, there must be supervision for the youth while waiting. During the hearing, attorneys and judges use words and talk about concepts that the youth may not understand. Youth have to remain quiet and attentive during hearings that can be long and boring to them if they do not understand what is happening.

Who will transport the youth? Most courts rely on the child welfare agency to transport the youth to and from court. In some jurisdictions,

youth are placed far from the courthouse and transporting youth can be time consuming and inconvenient.

Will the court need additional time for the hearings? When a youth is actively involved in her hearing, the hearing may be longer. The youth may want to update the court on her status and express any concerns. The judge may also want to spend extra time interacting with the youth who has taken the time to attend court.

*What type of hearing is scheduled?*²¹ Some hearings lend themselves to youth participation more than others. If there is a hearing dealing with a legal issue that has little impact on the youth, it may make more sense for the youth to not attend. However, if the hearing concerns visitation with parents or long-term permanency plans, the youth's attendance will be vital.

Tips for involving youth in court proceedings

There is no single rule or process that governs a youth's presence and participation in court. Several variables must be considered. The following suggestions offer different ways to involve children in court proceedings that consider the factors outlined above.

Have the youth present throughout the hearing. In many hearings, it will be appropriate to have a youth present for the whole hearing,

The presence of children in court proceedings that affect them is invaluable, even when they are too young to express themselves. The child's presence alone can give a face to what would otherwise be simply words on paper. Nothing can substitute for personally observing and engaging a child.

—Judge William G. Jones (ret.)

without restricting testimony and information that she may hear. This occurs when the judge and parties feel the testimony will not harm the youth and the youth's input is vital.

Present the youth's testimony in-chambers. Bring the youth into chambers with the judge and lawyers to discuss the case. This can occur during the hearing. Most jurisdictions allow in-chambers meetings between the judge and the youth. All lawyers and a court reporter can be present, and all discussions can be on-the-record. This provides the youth with a voice directly to the judge and protects him from any potential damage from seeing abusive parents or hearing negative information about his parents. Recording the interaction protects the parties who are not permitted in chambers (i.e., the parents) by informing them what information the youth has shared.

Arrange an advance visit to the courthouse. Bring the youth to the courthouse when hearings are not occurring. Introduce the youth to the judge who makes the decisions in their case. Show the youth the courtroom and explain where everyone sits and what everyone does. It is not necessary to discuss the specific case. Simply meeting everyone involved helps the youth feel included. It also may spark the youth's curiosity, so that she begins asking questions and playing a larger role in the case. This is especially useful with a preschool-aged youth who may not benefit from being present during the hearing. The judge will have the

benefit of meeting the youth and the youth can meet some of the participants.

Have the youth wait in a waiting area for the hearing. When the youth's input is required, bring the youth into court. The attorneys and judge can ask the youth questions and the youth can provide critical information about what is happening in her life. The youth would not be present for any other part of the hearing. This allows the youth to have input into decisions made on her behalf while protecting her from information provided or discussed during other parts of the hearing.

Exclude the youth from court during harmful testimony. Have the child present for all of the hearing except parts that may be harmful. All parties should have the opportunity to be heard on whether an issue is harmful to the youth. If the judge finds it would not be in the best interests of the youth to hear or see something, the child would be excused. For example, if the judge is going to hear graphic testimony about the sexual abuse of a sibling, the youth can be asked to leave the courtroom for that part of the hearing. This allows the youth to participate in the hearing, even when the youth's input is not required, and have similar protections as the previous two options.

Present the child's hearsay statements in court, without the youth present. Allow the child's guardian ad litem to have access to the child at an offsite location or by telephone. Check with your state and local rules for procedural require-

ments when introducing hearsay evidence (e.g., provide all parties with notice of intent to introduce youth's statements). In all cases, the child should be accessible in case the court determines the child's presence is needed.²²

Systemic changes to increase youth participation in court

A majority of jurisdictions, either because they lack statutory guidance or because of common practice, work with the presumption that youth should *not* be present in court except in certain circumstances. Changing years of practice may be challenging, but the more comfortable lawyers, judges, and other child welfare professionals become with it, the more common it will become. Changing the system to include youth in their hearings starts with the following steps:

Statutes and court rules

Each state should have a state statute or court rule identifying who should be present at dependency hearings. The statute or court rule should state a presumption favoring youth appearing in court and criteria for exceptions. Such criteria should include age, the youth's wishes about court participation, the youth's cognitive ability to understand the court hearings, the youth's emotional stability, the case facts, and other factors. A mental health professional's opinion may be needed, particularly if a youth is to be excluded from the hearing. There should, however, be a presumption that the youth be present in court unless the court finds it is not in the youth's best interest to attend. A court rule should require notifying the child via foster parents or other caregivers.

Court administrative policies

Absent a statute or court rule, a court can implement an administrative policy describing when youth should be present in court. The New

York City Family Court has such an administrative policy. Courts' policies should ensure that youth do not have to attend court during school hours. If that is not possible, the court should hear these cases before others so the youth can be excused and return to school. In most cases, courts should establish specific times for hearings so youth do not have to spend many hours waiting for their cases to be called. The New York City Family Court policy directs the court to call cases where a youth is present in a "timely fashion so the child does not remain in the courthouse unnecessarily."²³

The court should make clear who is responsible for transporting the youth to the hearing. In most cases, it makes sense to have the youth's custodian responsible for transportation. A youth should also be able to have a trusted support person accompany her to court.

If a youth is not present at a hearing, the court should routinely inquire about the youth's whereabouts. This helps the parties understand that the court expects the youth to attend the hearings.

Youth's representative practices

The youth's representative plays a major role in his client's court attendance and participation. Rarely does a youth attend a court proceeding if the youth's representative does not want his client to be there. Often the only way a youth will be brought to court is when the representative requests it. It is important for the youth's representative to be informed of the benefits of court participation and the ways youth can participate.

As the person speaking for the youth, the youth's representative's first priority should be quality representation. Regardless of whether the youth attends court, the youth's representative should at a minimum:

- Be appropriately trained in child welfare law, child development,

and child psychology.

- Be familiar with child interviewing techniques and children's communication skills.
- Have a caseload that permits him to establish a personal relationship with every client.
- Explain his role to his client.
- See his client, at minimum, before every court hearing in a setting familiar to the child (e.g., school, home, park, etc). Meeting the youth in the courthouse is not conducive to developing a trusting relationship.
- Complete an independent investigation of the case, including speaking with parents, relatives, therapists, teachers, and anyone with significant information about the youth.
- Ensure the youth's voice is heard in every proceeding.

When deciding whether the youth should attend court, the youth's representative should consider the factors listed in the prior section. When appropriate, he should encourage the youth to attend the hearing. He should inform the court whether there should be an in-chambers discussion, whether the youth would like to meet the judge in advance, or whether there are some issues the youth should be excluded from during the hearing.

If the youth's representative decides, after meeting and talking with the youth, that she should be present during the hearing, he should prepare her. He should explain who will be present (and what their roles are), what will be discussed, and what decisions will be made. Above all, he should discuss with the youth what she would like to the court and the other parties to know. The representative could even do a mock hearing so the youth is comfortable. If the youth would like to speak, he should assist her in deciding what to say. He should ensure that the youth

will be transported to the hearing.

During the hearing, the youth's representative should ensure the youth is aware of what is happening and consult with her when questions arise. If the youth would like to speak, he should ensure that she is given that opportunity. He should then spend time with the youth after the hearing to discuss what occurred and allow the youth to ask questions and express any concerns. If necessary, he should request therapeutic services to help the youth more thoroughly process the court experience. He should praise her for attending and participating.²⁴

If after meeting and talking with the youth, the representative thinks she should not attend the hearing, he should also have a way to contact the youth during the hearing if something unexpected occurs. He should contact the youth directly after the proceeding and let her know what occurred, answer any questions, and let the youth know when the next hearing is scheduled.

In some jurisdictions, the representative is required to submit a report about the youth to the court. This report should bring the youth "to life" for the court.²⁵ It should discuss the youth's physical appearance and personality, strengths and needs, relationships with significant people, and results from medical and educational assessments. It should also include a picture.²⁶ This report is especially important for a very young youth. During court proceedings, the representative should continually refer to the youth described in the report to help the judge and parties understand her unique needs.

Accommodations for youth in court

The national, nonpartisan Pew Commission on Children in Foster Care recommends that children under court supervision and their parents must have an informed voice in decision-making related to whether a child enters foster care,

It's important for kids to be in court so they can understand the process. I wanted to be there so that the judge would know what my plan was for my future. I should have a say in what the plans are for me. I think the judge liked me being in court because it showed that I cared about my case and what was happening to me.

—Former foster youth

how a child fares while in care, and what kind of plan is in place to secure a safe, permanent home for that child. The Pew Commission encouraged state court leaders to consider the impact of several factors on the youth's experience in court. These factors include courtroom and waiting area accommodations, case scheduling, use of technology in the courtroom, and translation of written materials to make the process more accessible and meaningful for all participants including children.²⁷

Courts around the country are beginning to create child-friendly waiting areas. Courts could solicit donations of toys, reading materials, smaller tables and chairs, and other child-friendly tools to make waiting for court hearings more tolerable for youth. Many courthouses have waiting areas with televisions tuned to news programs. During dependency court days when children may be present, the television can be changed to youth-friendly programs. In one Seattle court, a trained dog from Canine Companions for Independence is placed in the courthouse to comfort the kids.²⁸ There should also be separate conference rooms for attorneys to meet with youth before court. (See box on special accommodations for kids with disabilities.)

Agency policy

Agency policy and training guidelines should stress that youth must be at all hearings unless the court, agency attorney, or child's attorney says otherwise. There should be an understanding of who is responsible for transportation. It seems reasonable that if the agency has custody,

the youth's social worker or transportation aid should organize transporting the youth to court. Some agencies around the country have transportation units that bring youth to court.

Preparing children for court should also be an agency priority. Discussing what the youth will see, who will be present, and what questions the youth should expect is critical in making the court experience more valuable for the youth. Agencies around the country have created booklets for youth in foster care explaining their rights in age-appropriate language using cartoon characters to explain the players.²⁹ One of the first rights typically listed is the right to attend court hearings. This tool can be used by social workers and attorneys to begin a dialog with youth about the court experience and how to make it more valuable for youth.

In addition, the social worker should follow up with the youth after court to ensure she understood what happened. If necessary, enlist the assistance of a mental health professional to help the youth process the experience.

Court orders

In addition to the judge asking why the youth is not in court, court orders should have a place to state

whether the child was present. Additionally, the court should note whether the youth is to be transported to the next hearing on each court order and should enforce this requirement.

School accommodations

Schools should not penalize a youth for attending a court hearing. There should be a dialogue and a memorandum of understanding between the schools and the child welfare agency about youth in foster care. The youth should not be sanctioned for any absences for child welfare-related appointments, court hearings, visits, etc.³⁰

Child and Family Service Reviews

The Child and Family Service Review (CFSR) is a tool used by the federal Children's Bureau to review states' policies and practices for ensuring safety, permanency, and well-being for youth in foster care. Improving youth's participation in court is linked to an important "systemic factor," contact between youth and caseworker, in the CFSR. Greater contact between youth and caseworkers improves outcomes for youth in foster care.³¹ Presence in court should provide this contact. The caseworker will often transport the youth to court and spend time with the youth while waiting for court hearings. This can provide valuable relationship-building time.

Improving youth's participation in court is also linked to an important case outcome, family reunification. Research shows that increased visitation between youth and parents boosts the chances for reunification.³² Contact between the child and

Judges can choose to exclude young people from court proceedings, but by doing so, they send a message that youth have no meaningful role in the process. Judges are, however, also able to empower young people by providing them with the opportunity to attend and actively participate in court proceedings that affect them.

—Judge William G. Jones (ret.)

parents before or after court contributes to this outcome.

The results from the CFSRs show that most states must improve the thoroughness and quality of the permanency hearings. Youths' presence in court may increase the quality of hearings because the court would take time to interact with the youth. There would also be less chance of short, cursory hearings.

Conclusion

Child welfare cases are about taking care of youth and doing what is best for them. Youth need and deserve to be a part of that process. A critical component of that process is court hearings. The more guidance attorneys and judges have on incorporating youth into their child welfare proceedings, the more likely the youth will have the opportunity to participate.

Andrea Khoury, JD, is an assistant director of child welfare for the National Child Welfare Resource Center on Legal and Judicial Issues, a project of the ABA Center on Children and the Law.

Endnotes

1. According to the *Guidelines*, a youth should be present at some point for the judge to observe them, at least during the review and permanency planning hearings. If the child is able to present information to the court on their needs and desires or if they have questions or concerns, they should be permitted to address the court. In addition, during the preliminary protective hearings, adjudication, disposition, and termination hearings a youth may be present depending on factors including age, physical and emotional condition of the child, and potential trauma to the child. National Council of Juveniles and Family Court Judges. *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Spring 1995, 69.

2. American Bar Association. *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*. Approved by the American Bar Association House of Delegates, February 5, 1996.

3. In addition, the standards specify criteria for children's attorneys to decide whether to bring a youth to court, including whether the child wants to attend, the child's age, and the potential trauma to the child. The lawyer or child's

representative, in making this decisions is urged to consult with therapists, caretakers, or other persons who have specific knowledge of the youth and whether attending the hearing would be damaging to the youth. *Id.*

4. National Association of Counsel for Children. *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (NACC Revised Version). April 21, 1999. D-5, D-6

5. "Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years After Fordham." *Nevada Law Journal* 6, July 27, 2006, 106.

6. Attorneys should not only encourage and facilitate youth attending dependency proceedings but also encourage the youth to advocate for themselves. Attorneys and judges should promote policies and practices that reflect this thinking on a systemic level. *Ibid.* 117, 122, 130.

7. Home at Last. *My Voice, My Life, My Future Foster Youth Participation in Court: A National Survey*, 2006, 10. <www.fostercarehomeatlast.org>

8. *Ibid.*, 11

9. *Ibid.*, 13

10. K.S.A. § 38-1570(a)

11. M.S.A. § 260C.163

12. N.M. § 32A-3B-13(c)

13. *Ibid.*

14. Florida Rule of Juvenile Procedure 8.255(b)

15. FL ST 39.701

16. VA 16.1-282

17. CA Welf. & Inst. §16001.9

18. MCL §§ 712A.19(5), 712A.19a(4), and MCL § 712A.19b(2)

19. Memorandum from Judge Joseph Lauria to Judges, JHO's, and Referees. RE: Court Appearance of Subject Children, February 25 2004.

20. *Ibid.*

21. It is worth noting that in delinquency hearings, children are required to attend hearings and they are afforded the same procedural protections as adult offenders.

22. National Council of Juvenile and Family Court Judges, Spring 1995, 34.

23. Judge Lauria's memo, February 25, 2004.

24. Freundlich, Madelyn and Sue Badeau. *Including the Voices of Young Children and Children with Disabilities in their Own Court Proceedings*. In press, June 5, 2006, 25.

25. Freundlich and Badeau. In press, June 5, 2006, 15.

26. *Ibid.*

27. Pew Commission on Children in Foster Care. *Fostering the Future: Safety, Permanency and Well-Being for Children in Foster Care*, May 18, 2004.

28. "How Courthouses Are Accommodating

Strategies to Help Children with Disabilities Communicate in Court

For helpful tips for involving and accommodating children with disabilities in court, visit CLP Online: www.childlawpractice.org Select "Weblink" from the menu.

Children and Youth." *Children's Voice* 15(1), Jan/Feb 2006. Washington, DC: Child Welfare League of America. <www.cwla.org>

29. For example, The Association for Children of New Jersey published a book entitled *I Can Make It! The Story of Justin and Jenn in Foster Care*, by Mary Coogan and Nancy Parello. The project was funded by a federal Court Improvement Grant.

30. For example, California passed AB 490, which states: "Grades of a child in foster care may not be lowered due to absences from school because of a change in placement, attendance at court hearing or other court related activity." Cal. Educ. Code 49069.5(h).

31. National Conference of State Legislatures. *Child Welfare Caseworker with Children and Parents*, September 2006. www.ncsl.org. This report provides information about the potential of the effective child welfare caseworker visits in achieving positive outcomes for children and families, both those receiving in-home and foster care services.

32. Leathers, Sonja. *Parental Visitation and Family Reunification: Could Inclusive Practice Make a Difference?* Washington, DC: Child Welfare League of America, 2002. <www.caseyfoundation.org>

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This article is a follow up to “Seen and Heard: Involving Children in Dependency Court,” in the December 2006 *CLP*.

With Me, Not Without Me: How to Involve Children in Court

by Andrea Khoury

Youth are the most important part of an abuse and neglect case. Failure to give a child a say in court diminishes the process and prevents judges from having the most information to make the best decision.

—Judge Steven Rideout (ret.),

Alexandria, VA, Juvenile and Domestic Relations District Court

As the child’s advocate or the judge presiding over a child welfare case, you know that involving a youth in court is a key step in the proceedings.¹ The next step is exploring what to do when a youth is in the courtroom. What do you do when a child is in court to ensure her participation is as meaningful as possible to the child and the court? How do you use the child’s participation to dig deeper into what you already know and promote permanency for the child?

Children are a resource in the case and can offer valuable insights to aid decision making. This article offers tips to help lawyers and judges in child welfare cases:

- prepare for children’s involvement in court;
- make courtroom accommodations that help children feel comfortable participating in the court process; and
- ask age-appropriate questions to obtain information from the child that will aid decision making in the case.

The tips that follow are not new or revolutionary. They remind busy practitioners. Choose the tips that relate to your case and use them to make

children’s participation routine practice in every case.

Preparing for Children’s Involvement

Remember that the child welfare proceedings are about the child. A child who comes to court should not be invisible. The child’s involvement should be welcomed and dependency court judges and child welfare advocates should do all they can to prepare and plan for that involvement.

Judges

As the judge, you will not be as intimately involved with the child as the social worker and the child advocate. It’s important to get as much information in advance about the child’s history, current placement, school progress, health issues, child’s relationship with family, and other issues that develop. The information you’ll need will differ based on the type of hearing, the child’s age, and the child’s cognitive and emotional level. The last article² discussed the value *to the child* of being in court. This article focuses on the value *to the judge* of the child being in court, so the court needs to be clear on what kind of

information the child will provide and how best to elicit that information. The following questions can help identify the reason for the child’s involvement and should guide discussions with the child:

- What is the child’s role in the proceedings?
- Does the child have important knowledge about the allegations in the petition?
- Has there been a recent change in the child’s placement?
- Do you need the child’s input about the placement?
- Do you need the child’s reactions to child welfare services he has recently received?
- Is termination of parental rights

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ABA Child Law Practice (CLP) provides lawyers, judges and other professionals current information to enhance their knowledge and skills, and improve the decisions they make on behalf of children and families. Topics include: abuse and neglect, adoption, foster care, termination of parental rights, juvenile justice, and tort actions involving children and families.

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being considered and, if so, do you need to hear the child's reaction or do you need to make sure the child understand what is going on?

Once the reason for the child's involvement is clear, judges can prepare for the child's permanency or review hearing by taking the following steps:

- Review previous court orders for outstanding issues (e.g., Is the child participating in the mentoring program that was ordered? Is the child happy with the change in visitation ordered at the last hearing? Has the child increased his grade point average as he promised at the last hearing? Has the child welfare agency been facilitating relationships between the child and stable adults in hopes of creating long-term connections for the child?).
- Require the social worker and other service providers to submit their reports at least three days before the hearing on the permanency plan and efforts to achieve that plan.
- Read the reports highlighting the child's strengths and potential weaknesses (e.g., Notice whether the child's grades have improved or the child's behavior has changed. Notice if the child has stopped attending therapy or refuses to go to school. These are the areas the judge should discuss with the child.)
- If the child welfare agency worker or attorneys would like you to address certain issues with the child, ask them to let you know in advance.
- Become familiar with permanent placement options for the child.
- Encourage the child advocate to submit a written statement to the court identifying anything the child wants to discuss.
- Create the presumption that all children will be present for their

hearings unless the court finds it is not in the child's best interest. Require the parties to inform you in advance if they do not want the child present for all or some of the hearing and the reasons it's not in the child's best interests.

Child Advocates

As the child's attorney, you must spend time preparing the child for court involvement. Steps you can take to prepare for the child's involvement include:

- Make sure the child understands who will be present at the hearing and their roles, what will happen at the hearing, and what the child's involvement will entail.
- If the child will testify, provide guidance about how to testify effectively. Advise the child if the judge or other advocates will ask the child questions in court and the nature of those questions.
- Help the child feel comfortable with the questioning process and help him prepare. For example, role play a court hearing in a comfortable environment so the child will know what to expect and has the opportunity to ask questions in advance.

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Getting Kids to Court

Many children do not come to court because they cannot get there. The child is placed too far away. No one has been identified to bring the youth to court. Strategies to address transportation are:

- Set the hearing date and inform all parties well beforehand so they can arrange for transportation.
- Set the hearing at a convenient time for the child and transporter.
- Include transportation in the court order.

(Continued from page 130)

- Encourage the child to write down what she will say in an outline or notes. Speaking to a judge in court can make a child anxious and forget what she wants to say. Having something written down will jog her memory.
- If the youth doesn't want to speak in court, help the youth write something to give the judge to read.

Accommodating Children in Court

Highlight a child's positive accomplishments first, like congratulating her on how well she is doing in school or how well she is adjusting to a new foster home before delving into any issues that may cause some anxiety. Mention things from the previous hearing (based on your notes) that will make the child feel special. Do not ask the same questions over and over signaling that you have not reviewed the case. Conclude the hearing by setting expectations for the child that you will follow up on during the next hearing.

—Judge Juliet McKenna,
District of Columbia Circuit Court

While the child is in court, the role of the judge and attorneys is twofold: to make the experience a positive one for the child, and to gain as much information about the child and family as possible. The following tips accomplish both tasks for verbal and non-verbal children.

Verbal Children

Children tend to be more accurate and complete in providing information when they are familiar with the questioner, their surroundings, and the purpose for being present.³ When this happens, the child's participation in court is more meaningful to the child and the court. Judges can help make a child more comfortable and familiar

with the court process by making a few easy accommodations.

- Hear cases where children are present first.
- Ask any nonparty to leave the courtroom if a sensitive issue will be discussed.
- Arrange for (or allow) children to have a support person present if they desire.
- Respect the child's family members, especially those that may be present in court.

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand.

- Provide age-appropriate reading material describing the court process to the child.
- Address the child directly using a supportive voice and making eye contact.
- Connect with the child by learning what the child likes/dislikes and commenting on it (e.g., The judge could ask: If you had three wishes, what would they be? If you could change places with anyone in the world for a day, who would you choose and why? Is there something that scares you?).
- Explain your role (and the roles of other adults participating in the hearing) to the child and explain what issues you can address.
- Allow the child to look around and ask questions about her surroundings.
- Provide an age-appropriate list of some legal terms and definitions that may be used during

the hearing.⁴

- Avoid acronyms or legal jargon that a child would not understand.
- If the child submits a letter, read it in the presence of the child.
- Publicly praise the child about her accomplishments.
- Thank the child for coming to court.

Children's advocates can also help children feel comfortable in court. Sometimes during court proceedings the child has planned to speak but changes her mind. She may have become nervous or rethought her decision to speak after seeing her parents in court. Be prepared to continue to be the child's voice and present options to the child:

- Offer to speak on the child's behalf.
- Ask the judge to ask parents to leave the courtroom (perhaps in a side bar at the bench).
- Ask for an in-chambers discussion.

The child will look to you for guidance. Make the court experience positive and thoroughly prepare each child based on his/her unique needs and circumstances.

Infants, Toddlers, and Nonverbal Children

If the child is an infant, toddler, or is nonverbal, it is still important for the child to be meaningfully involved in the court hearing. Judges often can learn valuable information simply by observing the child's appearance, demeanor, and interactions with others.⁵

The younger child's involvement differs from an older child's involvement. By taking the following steps, judges can obtain valuable information to shape decisions and ensure nonverbal children benefit from court hearings:

- Expect the child to be present in court only for short periods (no more than 10-15 minutes if the child is restless).

- Observe the child at hearings. Try to make these hearings low key with minimal stress to the child.
- See the child in-chambers.
- Observe the child interacting with her caregivers (parents, relatives, foster parents) and siblings during the hearing.
- Notice the child's demeanor, behavior, and appearance, but be careful about drawing conclusions based on this one snapshot in time.
- When the child does attend court hearings, ensure someone she trusts is present with her.
- Ask someone who has spent time with and fully knows the child to speak about the child.
- Request an updated picture of the child at each hearing.
- Have toys for the child during the hearing. Observe the child playing with the toys.

Questioning Children in Court

Even young children have the competence to tell adults what they know when they are questioned in age-appropriate ways. Until children have fully developed linguistic skills, the responsibility for getting at what children know rests squarely on the adult, and in particular, on the language of the question, and not on the language of the answer.

—Anne Graffam Walker,
Forensic Linguist⁶

Hearing directly from the child offers a valuable perspective that you won't get from reading reports or getting information secondhand. The child can take you into his day-to-day life, what's going well at home and what's not, how he is doing at school, and what kind of permanent living situation he desires and how to get there. Consider the child's perspective on these and related issues when reviewing and making decisions about services and the child's permanency plan.

Sample Legal Definitions for Children

Dependency case—A family comes to court because a parent has hurt his or her child or the parent has not taken care of his or her child.

Foster family—A temporary family that a child lives with when his or her parents can't take care of the child. A foster family will make sure that you are safe. They will take care of you until you go home.

Social worker—Someone who will help you and your family. You can talk to your social worker about how you are feeling and if you have any questions.

Judge—Works in the courthouse and is in charge of what happens in court. The judge decides what should happen to you. The judge makes sure everyone is doing what they are supposed to be doing.

Reunification—A child goes home to his or her parents when the home is safe for the child.

Abuse—When a child is being hit or touched in bad ways.

Neglect—When a child does not have proper food, clothing, a place to live, or other things a child needs to live.

Lawyers/Attorneys—A person who goes to college and law school. Lawyers/attorneys give advice and speak for people in court. The judge may give you a lawyer to speak for you. You should meet with your lawyer.

Adoption—The way a child legally becomes part of a new family.

Guardianship—Another person acts as the parent for a child.

Court—The court is the building where the judges work, the hearings are held, and all the papers are filed in your case. The court is where all the decisions are made that will affect what happens to you.

Court hearing or trial—A judge listens to the people and attorneys talk about what is happening with your family. After the hearing or trial the judge decides what should happen to you and how to make sure you are safe. The judge also decides how to make sure your family gets the help they need. Tell your caseworker or attorney if you want to talk to the judge.

Guardian ad Litem (GAL)—Helps the judge decide what is best for you. You can meet with your GAL. Your GAL will probably want to talk to you alone to learn more about you.

Court Appointed Special Advocate (CASA)—There may be a CASA in your dependency case. The CASA will talk to you and your family and tell the judge what is best for you.

Sources: New Mexico Supreme Court, Court Improvement Project Task Force. *What's Going On? A Booklet for Children in Foster Care*. New Mexico: Shaening and Associates, 2001; Judicial Council of California. *What's Happening in Court – An Activity Book for Children Who are Going to Court in California*, 2002 <www.courtinfo.ca.gov/programs/children.htm>; North Carolina Court Improvement Services/Resources Subcommittee. *North Carolina Juvenile Court: Child Protection Hearings—A Handbook for Parents, Guardians, Custodians, and Children*, 2001.

Involving Children in Permanency Hearings: Federal Guidance

Section 8.3C.2c TITLE IV-VE, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

Question: In what way can a state meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(ii) of the Social Security Act (the Act)?

Answer: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(ii) of the Act tasks the state with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the state with some discretion in determining how it will comply with the requirement.

We do not interpret the term ‘consult’ to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, **the child’s views on the child’s permanency or transition plan must be obtained by the court for consideration during the hearing.** For example, a report to the court in preparation for a permanency hearing that clearly identifies the child’s views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child’s views to the court could also meet the requirement. Information that is provided to the court regarding the child’s best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child’s views on his/her permanency or transition plan.

Source: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. *Child Welfare Policy Manual*, August 7, 2007. Available online: http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=58

Using Language

Before hearing from the child, give thought to the words you will use when questioning the child in court. Consider the child’s age, developmental level, cultural background, and verbal ability. Use care to match appropriate language to these factors. When preparing to question a child in court:

- Keep questions short and simple. (e.g., How old are you? What is your best friend’s name?)
- Refrain from using pronouns or acronyms. (e.g., “What did Chris do?” instead of “What did she do?”)
- Ask the child to explain what was

just said if you’re concerned that he doesn’t understand a question or statement. Children will often not disclose if they don’t understand.

- Use concrete (simple and familiar) nouns and verbs. (e.g., use words like “in the back yard” instead of “area”)
- Recognize cultural differences in language. (e.g., A long pause is socially acceptable in Native American cultures but may be seen negatively in American culture. In some cultures kinship terms can refer to nonrelatives.⁷)
- Avoid abstract questions. (e.g., “How well do you get along with

your family?”)

- Recognize that children usually respond to questions literally (e.g., Q: Are you in school? A: No. The child is referring to where she is right now (in the courtroom) not the broader question of whether she attends school.)
- Be alert for miscommunication. Ask follow-up questions to ensure both people are speaking about the same topic.⁸

Questioning Children in Child Welfare Proceedings

You are the one who makes the decisions, and I need to be heard so people may understand how I feel or what I need. Listen to me, since no one else will, and try to understand where I’m coming from. Maybe I am a child, but I’m not dumb; I know right from wrong. I need to know that you will make the right decisions for me, so that I can live life the way it’s supposed to be.

—Foster youth⁹

The nature of the proceeding will govern what questions you ask the child in court. Several common areas of focus in child welfare proceedings are discussed below with suggested questions for each.

Placement and Permanency

If you don’t ask foster children what they want, how can you make an informed decision about their lives?¹⁰

Although permanency involves much more than where the child will live, the child’s placement, and whether that placement is permanent are important to the child. How the child feels about the placement often determines whether the placement will succeed. It is important to seek the child’s opinion and thoughts on current and anticipated placements, including whether changes can be made in the current placement that will resolve a child’s

concerns, thereby saving the placement. Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored. In some cases, they aren't even consulted on this issue which is so central to the quality of their lives.

Aside from questions that will be answered in the social worker's report about whether the child likes her placement, number of placements since the last hearing, and plans for future housing, judges should ask about potential permanent placements. Some questions are obvious but others can reveal information that the court and agency may not have considered. This list of questions is not comprehensive and will vary from case to case but are worth considering.

- Who do you spend most of your time with?
- Is there a relative to whom you are especially close?
- Is there a close family friend with whom you like to spend time?
- Over the holidays, where do you eat dinner?
- If you could take three people to Disney World, who would you take?

The answers to these questions may lead to people who have not already been formally involved in permanency decisions. The child welfare agency should investigate the child's answers to these questions for potential permanent placements or for permanent connections in a child's life.

Education

Children spend many of their waking hours in school. Judges can gain a great deal of information about school from the social worker and educational records. However, the child's well-being is shaped by more than academics. Judges should go beyond the basics available in the social worker's report or the educational records. Certain questions can elicit school-related issues that may not be appar-

ent to the social worker such as relationships with teachers and peers, or participation in extracurricular activities. The child's representative should prepare the child to answer these questions and the judge should be comfortable posing them.

If the child is in regular education and thinking about postsecondary education opportunities, the judge should ask questions about the child's intended

Children can often find their own placement if the decision makers take the time to talk with them. Too often the child's wishes are ignored.

field of study and what schools the child is considering. The judge should also ask if anyone is helping the youth consider education options, fill out applications, visit schools, and navigate the complex maze of financial assistance. Children see judges as highly educated people and may be interested in the judge's perspective on higher education and attending a four-year college. Even a short conversation with the judge on this issue can boost a young person's confidence and desire to pursue higher education.

If the child is having problems in his sixth grade class (e.g., suspensions, bad grades) the judge should not focus on the negative but discuss such issues as the following:

- What classes do you like and why?
- Who are your friends and are they in your classes?
- Are there kids at school who are mean?
- What do you do after school?
- Do you have trouble following along in your classes?

These questions help uncover the cause of school problems and can help to build a relationship and trust between the judge and the youth. The youth may need a special education referral, specialized tutoring, or intervention if he's being harassed by his peers. These questions also show the youth that the court is interested in helping to solve his problems, and can help to boost the youth's self esteem.

Services

Most children and families require services to facilitate permanency. Services for parents may include parenting classes, substance abuse treatment, and mental health evaluations and treatment. Services for children may include therapy, mentoring, and facilitated visitation. In most cases children should have input into what services will be ordered. The questions the judge should ask are aimed at discovering the child's view on what the issue is and how best to solve it. When the services are in place the questions should be:

- Are the services helpful?
- Are the services provided at a convenient time and place?
- Are the services addressing the issue?
- Do you like the service provider?
- Has anything changed as a result of the services?
- What still needs to be improved?

The answers to these questions (along with any service provider reports) may make services more meaningful and effective.

Transitioning out of the system

For youth who "age out" of foster care, there are a number of important questions to ask to help prevent later homelessness due to the lack of proper transition planning. In addition to the above questions about placement and permanency, judges should ask the child:

- Have you been formally involved in your discharge planning

(attending case planning sessions, providing input about housing, health, and other long-term needs)?

- What is your plan for health care after you are discharged?
- What are your plans for education or employment?
- If the child is currently in treatment for substance abuse, mental health, or other reasons: Do you know how to continue that treatment?
- Who are the adults in your life that you will rely upon after your case is closed?

Ending Proceedings

Before the child leaves the courtroom, take time to engage the child and ensure his participation has been meaningful. Judges should address the following when closing hearings:

- Ensure the child understands what was ordered and why.
- Ask the child what she wants to accomplish before the next court hearing.
- Encourage the child to attend the next hearing.
- Consult with the child when setting the time for the next hearing.
- Tell the child what she has to do before the next hearing.
- Invite the child to submit report cards, letters, or other personal items periodically to signal interest and concern.
- Review or ensure that someone will review the outcome of the hearing with the child and answer any questions.
- Thank the child for coming to court.
- Finally, ask whether the youth has any questions in a manner that invites questions.

Conclusion

A child can meaningfully participate in

her court hearings or she can be left out. The decision is up to the judges and child advocates. Taking the time to prepare for a child's involvement, using proper language, asking good questions, and talking about the right issues will lead to more productive hearings. Through these efforts, everyone benefits.

Andrea Khoury, JD, is an assistant director of child welfare for the National Child Welfare Resource Center on Legal and Judicial Issues, a project of the ABA Center on Children and the Law.

Endnotes

¹ See Khoury, Andrea. "Seen and Heard: Involving Children in Dependency Court." *ABA Child Law Practice* 25(10), December 2006, 145. This article discussed why to include youth in dependency proceedings, including:

- empowering the youth,
- giving them a sense of understanding and control of the process, and
- providing valuable information to the court.

It also discussed how to involve youth, including:

- in-chambers discussions,
- bifurcated hearings,
- full participation in all hearings,
- strategies for practitioners, and
- systems changes to make participation meaningful to the youth.

² Ibid.

³ Walker, Anne Graffam. *Handbook on Questioning Children: A Linguistic Perspective*, 2d edition. Washington, DC: ABA Center on Children and the Law, 1999, 22.

⁴ Jones, Judge William G. (ret.). "Making Youth a Meaningful Part of the Court Process." *Juvenile and Family Justice Today*, Fall 2006, 20.

⁵ Krinsky, Miriam Aroni. "The Effect of Youth Presence in Dependency Court Proceedings." *Juvenile and Family Justice Today*, Fall 2006, 16.

⁶ Walker, 1999, 24.

⁷ Ibid., 71.

⁸ Ibid., 91.

⁹ Foster youth quoted in *My Voice, My Life, My Future*, 2006, prepared by Home at Last and the Children's Law Center of Los Angeles. Available at http://www.pewtrusts.org/our_work_ektid19876.aspx

¹⁰ Lockett, Veronica. "Right to Speak in Court Vital to Cases of Foster Children." *The University Star*. www.star.txstate.edu

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(In re Kalil, Continued from p. 131)

cases to place confidential reports in a sealed envelope that is available only to the "parties in the action and their attorneys." The court explained that the court rule describes general procedures for filing GAL reports but does not prevent the court from keeping portions of the GAL report confidential if there is a stipulation and confidentiality is in the child's best interests.

The father's second issue was whether his due process rights were violated when the court refused to let him view the GAL's report? The court explained that while parents have a due process right to be heard, examine witnesses, and to be informed of and challenge adverse evidence, these rights are not absolute. Since the trial court approved the parents' stipulation limiting their right of access to the child's confidential communications, they waived their right to review the report. Therefore, the trial court properly denied the father's request to access the sealed report.