

Youth Participation in Court Hearings

California Permanency for Youth Task Force Recommendations to The Blue Ribbon Commission on Children in Foster Care

Introduction:

In recent years, courts and child welfare systems around the country have recognized the importance of permanency for all foster children, including older youth,¹ and of youth participation in decisions that affect their lives.² Juvenile court officials and experts have consistently recommended that youth be present in court for permanency planning and other hearings;³ actively involving youth in court hearings can improve permanency planning and the likelihood that those plans will be carried out. For example:

- Youth can provide the court with specific information that may not be available from court reports. For example:
 - ... 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.⁴
- The court can hear directly from the youth about his or her plans and dreams as well as any challenges or problems. This will help to ensure that any orders or instructions issued by the court are realistic and meet the needs and circumstances of the individual youth. Youth participation helps to guarantee that the court, the agency and the youth are working together on common goals and gives the court an opportunity to provide encouragement and guidance.
- Participation in court hearings helps youth understand the court process and why certain decisions are being made. It also gives youth a sense of control over their lives, helping to decrease resistance to and increase participation in plans because youth feel that plans were developed with them and not done to them.
- When a youth participates in court hearings, the court gets a real picture of who the youth is. This helps to ensure the court is focused on the needs of the youth, rather than solely on the needs of the parents or the interests of the child welfare agency, and that everyone is focused on the youth's needs for permanency.

Courts, advocates, and child welfare professionals are focusing increased attention on foster youth participation in court hearings,⁵ and national child welfare and legal standards call for youth participation unless it would be harmful to the youth.

National child welfare organizations agree that youth should participate to some extent in their child welfare hearings ... National judicial and bar associations addressing this issue have uniformly emphasized the importance of youth appearing in child abuse and neglect cases.⁶

However, a recent national study indicates that many youth do not attend their court hearings.⁷ The most frequently cited reasons for nonattendance were lack of notice about the date of the hearing or the right to attend. Other factors were thinking no one would listen, the need to miss school, lack of transportation, fear or nervousness about the proceedings or what would happen, anger at the system, discouragement by a social worker, and lack of appropriate court clothing.⁸

Of those who did attend, three quarters viewed their participation as helpful, but others cast their experience in a less positive light because proceedings were inhospitable, they did not understand what was going on, or they felt they were not being heard.⁹ As one author has noted, "little guidance exists to help professionals involve children in court proceedings in meaningful ways."¹⁰

A subcommittee of the California Permanency for Youth Task Force¹¹ has developed the following recommendations to further this discussion in California. These recommendations build on the broader Recommendations for Effective Partnerships on Youth Permanence¹² to hone in on youth participation in court hearings, preparation and support for youth attending hearings, and how courts can help to assure that each youth attains permanency in as timely a manner possible.

Recommendations:

1. Youth must be able to exercise their right to attend and participate in court hearings as required by law.

In California, every foster youth has the right to be present at his or her juvenile court hearings¹³ and to make a statement to the court.¹⁴ In making permanency decisions, the court must consider the wishes of the youth.¹⁵ Foster youth who are 10 years old or older have the right to written notice of dependency hearings, and if the youth is not present in court, the court must determine whether the youth was properly notified.¹⁶ Foster youth also have the right to notice of juvenile court dependency hearings concerning their siblings.¹⁷

- Attorneys for youth and judges should ensure that these legal requirements are met.
- Agency policy and training guidelines should reflect these legal requirements,¹⁸ and child welfare agencies should make sure that social workers are aware of these rights and support youth in exercising them. Social workers have a responsibility to inform foster youth of their rights, at least every six months¹⁹ and can help youth to understand and exercise these rights.

- The court should insure that a transportation plan exists so that the youth can get to court. The youth's attorney and the child welfare agency should work together to make sure that the youth has transportation. The plan may vary with the circumstances of the youth and the programs available. For example, if the youth is living with a foster parent who also attends court, the foster parent can transport the youth. Some counties include transportation as a contract requirement for group homes. Some counties have transportation workers who can provide a ride. In some cases, the social worker or attorney may want to transport the youth, providing them an opportunity to talk with the youth about what is going to happen and answer any last minute questions. Any transportation plan should be designed as efficiently as possible so that the youth does not spend unnecessary time at court. For example, van rides should not require the youth to wait for hours after his or her case is heard before going back home or returning to school. Transportation should be available to all youth and not limited based on the type of placement.

2. Court proceedings should be youth friendly.

Courts can explore creative ways of making court schedules and hearings more hospitable to youth and minimizing interference with school. For example, some courts, have established a youth calendar. Benchmark Permanency Hearings for Teens in Cook County, Illinois, and the Foster Teen Court in Tampa, Florida, devote a specific calendar to older youth in foster care. Hearings are scheduled to avoid conflict with school and other activities, and the judge actively encourages youth to participate in discussions about their future.

- The court can schedule hearings that involve youth to avoid unnecessary disruption of school and other important activities. For example, Juvenile Court in Monterey County has a monthly youth calendar that meets in the afternoon after school hours.
- The court can implement more efficient scheduling of matters, such as block time and time certain calendaring to reduce waiting time and conflicts with school or other important activities.²⁰
- Judges can provide youth with an opportunity to speak up by affirmatively asking youth for their perspective.
- The court should provide an appropriate waiting area for youth. For example, the Los Angeles Edelman Children's Court has a space designed specifically for foster youth. State policy requires courts to endeavor to provide a children's waiting room in each courthouse.²¹ Some courts already have children's waiting rooms, and more will be added as court facilities are built or remodeled. Juvenile courts should make sure that age appropriate facilities are available for all youth.

- The court should provide a private area for youth who need it, such as youth who should not encounter an abusive parent in the hallway. In some circumstances special security should be arranged. Attorneys for youth should preview the situation and make appropriate arrangements so that youth do not encounter uncomfortable or dangerous situations.
- The court can work with the child welfare agency and members of the community to provide information and materials for youth. For example, Los Angeles County makes a video about the court process available in the youth waiting area, and some counties provide youth with a video or book to take with them. A DVD about the court process could be made available to youth and provided to care givers who can review it with the youth. Even items such as teddy bears, coloring books, or goodie bags can appeal to older youth as well as younger children. Any gifts should be made available to all youth and should not be limited to youth in certain circumstances (such as shelter youth or youth living with unrelated foster parents.)
- Juvenile courts should consider promulgating local rules and practice guidelines on youth participation and permanency planning so that the attorneys and all parties will understand the process and their responsibilities.
- The court and community agencies could work together to house services at the courthouse. For example, some CASA programs have an office in the court building and can provide service and support to youth on site.

3. Youth should receive support and preparation for participation in hearings.

Youth need to know what is going to happen in court and the roles each individual (e.g., the judge, attorneys, CASA, the clerk) plays; they need to understand what is expected of them and what the judge can and can't do; and they need to be prepared for things that may happen and possible disappointments.

- The youth's attorney should talk with youth about what is going to happen in court and what they can expect. What issues will the court address? What kind of information will be provided to the judge? What questions is the court likely to ask? What decisions will the court make? CASAs may also be able to assist the youth to understand the court process.
- Law firms or organizations that provide counsel for youth should work to minimize changes in the individual attorney who represents each youth. Changes in counsel interfere with the development of a trusting relationship and make it difficult, if not impossible, for the attorney to know and understand the youth's situation. A good attorney-client relationship can be particularly important in helping the youth develop appropriate permanency plans that meet

the youth's individual needs and take into account his or her dreams and aspirations.

- The youth's social worker, CASA, and/or care provider can help the youth understand the court process. Foster parent and group home staff training on court issues could include information about how to talk with youth and help them prepare for court. Court social workers are often very busy, but have valuable experience and expertise and may be able to assist youth to understand the process.
- The youth's attorney and social worker should communicate with each other before the hearing to discuss the youth's situation and the agency's plans. They can make sure that the youth is properly prepared for what is expected to happen in court. For example, the social worker could discuss the court process with the youth and provide the youth with written information, and the youth's attorney could review the same information with the youth. Communication will help to ensure that the youth is not receiving conflicting information, that someone is taking care of important preparation details, and that the attorney and social worker are not duplicating efforts.
- If the youth is working with a therapist, the attorney and/or the social worker should communicate with the therapist to discuss permanency plans. The therapist may have valuable input and can help the youth to plan for him or herself more effectively. Therapists who work with youth should have access to information and training about the juvenile court process, child welfare policies and practices, and current thinking about foster youth permanency and family connections, so that they understand what the youth is experiencing and the systems with which the youth interacts.
- The youth's attorney and social worker should assist the youth, or make a plan to assist the youth, to cope with possible disappointments or unexpected developments. For example, will the youth's parents be in court? How will the youth feel if the parents are expected but don't show up? What happens if a parent shows up under the influence of alcohol or drugs? Attorneys should have access to training, information, and mental health experts to assist them in understanding issues, such as response to grief and loss and the effects of trauma that may affect a youth's reactions. If the youth is working with a therapist, the therapist can help the youth prepare for things that may happen and work through the youth's response to things that do occur. The attorney or the social worker should communicate with the therapist about the court process and any issues that may be of concern to the youth so that the therapist can assist the youth to understand and work through any difficult issues.
- Youth should be provided with information about the court process when they are initially detained, before every court hearing, and at other times. For

example group homes could have information available for youth to review or take whenever they wish. The Administrative Office of the Courts (AOC) produces several publications to assist parties in understanding the juvenile court process. Attorneys, CASAs, social workers, and care providers should make these publications available to foster youth, and copies should be available in court and at the clerk's office.

- Courts could allow youth to visit the court room, perhaps more than once, during non-court hours to get comfortable with the setting.
- Attorneys, CASAs, and the court could work together to set up a mock court for youth to learn about how the court process works and who the players are.
- Communities could develop support programs, such as providing former foster youth as mentors or peer support for youth going to court. Examples of parent support programs in San Francisco and Monterey may provide a model. Peer support can help a foster youth understand what is going to happen, what the professionals are talking about, and what youth can do in court to make sure the judge understands them and their needs. Courts might want to develop an internship that allows youth to work at court and learn about the court process.
- California Youth Connection chapters, youth mentors, and attorneys can help youth develop confidence and skills that will enable them to communicate their needs and advocate for themselves. Attorneys have training in advocacy and problem solving; they can help youth develop these skills so they can advocate for themselves.

4. Judges, attorneys, and CASAs should understand youth development and the importance of permanency for older foster youth and have access to current information about successful program and initiatives.

Judges, attorneys who represent youth, and CASAs should understand the importance of permanency and what it means. Judges, attorneys, and CASAs can attend conferences, such as those sponsored by the California Permanency for Youth Project. Ongoing training and conferences for lawyers and judges, such as Beyond the Bench, should continue to provide training on permanency and add a focus on assisting youth to participate in court hearings. Training topics should include:

- Current information about youth development, the effects of abuse and neglect, and the effects of separation from family and loss of important connections.
- Permanency options, including the principle that permanency is not limited to adoption but can include ongoing relationships with family members, nonrelated extended family members, and other individuals who are important to the youth.²²

- How to communicate with youth in a developmentally appropriate manner; how to convey complicated legal concepts so that youth understand them; and effective ways of helping youth express themselves, particularly on painful subjects, for example, through creative writing, art, and poetry.
- The importance of sibling relationships, and the legal requirements in California for maintaining those relationships.²³
- The importance of family connections and non-related extended family members, even when youth cannot be placed with family. The importance of doing as little harm as possible to youth's connections with family and people who are important to them, and options that are available. For example California law permits open adoptions, where youth can maintain contact with his or her birth family even after adoption.²⁴
- Information about successful programs that identify permanency resources and achieve permanency for older foster youth, including new technology, such as family finding, and innovative programs, such as those that successfully reunite adolescents with birth families and arrange and support adoptions of older youth.
- Research on the success of adolescent adoptions, information about what makes these adoptions successful, and strategies for exploring adoption with older foster youth who may be skeptical or resistant.
- The importance of post adoption support, including adoption assistance, and support for other permanency options such as Kinship Care.
- Examples of model programs that include youth in court hearings.

5. Judges, attorneys, and CASAs should work with the youth and the child welfare agency to ensure that permanency planning meets the needs of the youth and that the plans are carried out.

Legal requirements for case plans,²⁵ transitional independent living plans,²⁶ court reports,²⁷ and court reviews²⁸ are designed to ensure effective permanency planning occurs and that youth are able to maintain connections with individuals who are important to them. California foster youth have the right to be involved in the development of their case plans, including plans for permanency placement.²⁹ Social workers have a responsibility to solicit the youth's input on his or her future and discuss current and future placement plans and progress with the youth.³⁰ All foster youth must be given a meaningful opportunity to participate in the development of these plans and to receive information about them, including any changes to a plan; youth twelve years old and older must be given an opportunity to review, sign and receive a copy of the plan.³¹ Foster youth sixteen years old or older also have the right to information about education options.³²

Judges, attorneys for youth, CASAs and social workers should work with youth to ensure that permanency is considered early. Issues raised by the questions and findings required by California Welfare and Institutions Code § 391 prior to termination of jurisdiction should be addressed and resolved well before the youth is about to emancipate from foster care.

- Attorneys and judges should ensure that legal requirements for development of plans, including youth participation, are met. Judges can use judicial checklists and other resources to ensure that all essential issues are addressed.
- The youth's attorney and social worker should talk with youth about his or her thoughts about permanency and independent living and the youth's dreams and plans for the future. Both the attorney and the social worker can help the youth to define permanency and emancipation goals and identify what needs to happen for the youth to achieve their goals. These discussions should begin early. For example, plans for college should begin during middle school so that youth can make sure they take the appropriate courses and have an incentive to work hard and do well in school.
- Attorneys for youth should ensure that youth have sufficient information to form opinions about the appropriateness of each option and that the child welfare agency and the court consider all permanency options for older foster youth. For example, some youth may reject the idea of adoption without fully understanding what it means.³³
- Youth and their caregivers should be encouraged to explore redefining what adoption and legal guardianship mean to them when considering any legal permanency options.
- Attorneys for youth should ensure that youth are receiving appropriate child welfare and foster care services, such as independent living services, and ensure that receipt of independent living services does not cut off permanency planning.³⁴
- Attorneys for youth and social workers should make information about adoption assistance, KinGAP, transitional Medi-Cal, transitional housing, education and training vouchers, and other support services available to the youth, the youth's caregiver, and other individuals who are important to the youth's plans for permanence. The court should ensure that the youth and other relevant individuals, such as adoptive parents, have this information, and the youth's attorney should ensure that the youth has access to the benefits and services for which he or she is eligible.
- The youth's attorney and social worker should ensure that youth have information about education and career options. The court, the youth's

attorney, and the social worker can work with Foster Youth Services and other experts to provide youth with information about options and to help the youth meet his or her education and career goals. Some child welfare agencies have developed an educational liaison who can help youth with these and other education issues.

- The Administrative Office of the Courts (AOC), child advocacy organizations, and or individual attorneys could develop a permanency checklist to help attorneys structure discussions with youth about permanency, gather all of the relevant information, and make sure that all of the issues are addressed.
- CASAs can help youth understand their options and make plans for the future. Some CASA volunteers have received special training in permanency and transition issues for older foster youth.
- Child welfare workers and independent living providers should meet with youth individually to discuss their plans. The results of these meetings should be included in court reports and discussed with the judge.
- Attorneys for youth and CASAs should point out permanency plans and issues to the court and should make recommendations to the court to further a youth's plans for permanency.
- Judges should carefully review permanency plans and require child welfare agencies to explore permanency options for older foster youth when that has not occurred. Judges should ask questions to ensure that legal requirements are met.
- The AOC could provide technical assistance on ways courts can improve permanency. For example, it could
 - create tools for judges, such as questions the judge can ask about permanency plans, recommended follow-up actions, and examples of best practices.³⁵ These tools could help enforce legal requirements, such as the preference for placement with relatives, and point out why these legal mandates are important, and help judges think through options they have when a case is in front of them.
 - provide assessments, or tools for self assessment, to help courts gauge how well they are doing on permanency policies. For example: What hours does the court hear cases that involve youth? Is there a place for youth to wait before their case to be called? What alternatives, such as mediation and alternative dispute resolution, are available?
 - help to identify and explore models within and outside California.

6. Attorneys and judges should work with youth and other professionals to identify and remove barriers.

Although California is ahead of many other jurisdictions in recognizing and addressing permanency needs of older foster youth, problems and barriers remain. Everyone involved in the foster care system, including attorneys, judges, CASAs, social workers, foster parents, other care providers, and foster youth should identify and suggest ways to address legal and policy barriers such as termination of state AFDC-FC (foster care maintenance) payments at age eighteen³⁶ and limitations on college aid for youth who are adopted.

Many juvenile court judges follow model court procedures by convening regular meetings of the child welfare agency, CASAs, attorneys, and others involved in the child welfare system and juvenile court process. These meetings can provide a forum for resolving problems at the local level and can help to identify state or federal policies and laws that should be improved.

The following people helped to develop these recommendations by serving on the subcommittee, providing comments, and/or providing administrative support:

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End Notes

¹ See, e.g., Kristi Charles & Jennifer Nelson, *Permanency Planning: Creating Life Long Connections – What Does It Mean for Adolescents?* (National Resource Center for Youth Development 2000); California Permanency for Youth Project, DECLARATION OF COMMITMENT TO PERMANENT LIFELONG CONNECTIONS FOR FOSTER YOUTH (2006); Alice Bussiere, *Permanence for Older Foster Youth*, 44 FAMILY COURT REVIEW 231-243 (April 2006); U.S. Department of Health and Human Services, *A Report to Congress on Adoption and Other Permanency Outcomes for Children in Foster Care: Focus on Older Children* (Children's Bureau 2005).

² See, e.g., National Resource Center for Foster Care and Permanency Planning & Casey Family Services, *Permanence for Young People: Framework* (Hunter College School of Social Work 2004).

³ See, e.g., National Council of Juvenile and Family Court Judges, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES, 80 (1995); National Council of Juvenile and Family Court Judges, ADOPTION AND PERMANENCY GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES, 20 (2000).

⁴ Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 CHILD LAW PRACTICE 145, 150 (December 2006);

⁵ See, e.g., Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 CHILD LAW PRACTICE 145-155 (December 2006); Home at Last, *My Voice, My Life, My Future, Foster Youth Participation in Court: A National Survey* (2006).

⁶ Khoury, *supra*, at 145.

⁷ Home at Last, *supra*, at 4-5. See detail at 9-10.

⁸ *Id.* at 12.

⁹ *Id.* at 5 & 13.

¹⁰ Khoury, *supra*, at 145.

¹¹ <http://www.cpy.org/taskforce.html>

¹² Mardith J. Louisell, *Recommendations for Effective Partnerships on Youth Permanence Between the Juvenile Court and Child Welfare* (California Permanency for Youth Project 2006).

¹³ Cal. Welf. & Inst. Code §§ 349 & 16001.9(17); California Rules of Court Rule 5.530(b).

¹⁴ Cal. Welf. & Inst. Code §§ 399 & 16001.9(17).

¹⁵ Cal. Welf. & Inst. Code § 366.26(h).

¹⁶ Cal. Welf. & Inst. Code §§ 290.1 – 295.

¹⁷ Cal. Welf. & Inst. Code §§ 291(a)(5), 292(a)(5), 293(a)(5), 294(a)(4), 295(a)(5).

¹⁸ Khoury, *supra*, at 154.

¹⁹ Cal. Welf. & Inst. Code § 16501.1(f)(4).

²⁰ American Bar Association, Center on Children and the Law, *Using Non-Judicial Court Staff to Help Achieve Permanency for Children*.

²¹ Cal. Gov. Code § 70640.

²² See, Reina M. Sanchez, *Youth Perspectives on Permanency* (California Permanency for Youth Project 2004), Charles & Nelson, *supra*, Bussiere, *supra*, at 233-234.

²³ For example, the court and child welfare agency must make efforts to place siblings together and maintain sibling relationships when appropriate, Cal. Welf. & Inst. Code §§ 361.2(i), 366.1(f), 366.3(e)(9), & 16002; the court must consider the effect on sibling relationships in deciding whether to terminate parental rights; Cal. Welf. & Inst. Code § 366.26(c)(1)(E); and the court may provide for postadoption sibling contact. Cal. Welf. & Inst. Code § 366.29(a).

²⁴ Cal. Fam. Code § 8716.5; Cal. Welf. & Inst. Code § 366.29(a), Calif. Rules of Court Rule 5.400.

²⁵ Cal. Welf. & Inst. Code §§ 16501.1(f)(14) & (i); California Department of Social Services, Manual of Policies and Procedures (MPP) 31-206 & 230.

²⁶ Cal. Welf. & Inst. Code § 10609.4(b)(1), MPP 31-236 & 525.

²⁷ Cal. Welf. & Inst. Code §§ 365, 366.1, & 391(b).

²⁸ Cal. Welf. & Inst. Code §§ 366(a), 366.21, 366.22, 366.26(c), 366.3(e) & (f), & 391.

²⁹ Cal. Welf. & Inst. Code § 16001.9(a)(19)

³⁰ MPP 31-320.114.

³¹ Cal. Welf. & Inst. Code §§ 16001.9(a)(19) & 16501.1(f)(12).

³² Cal. Welf. & Inst. Code § 16001.9(a)(24).

³³ See, Gerald P. Mallon, Drenda Lakin, Natalie Lyons, and Andrea Khoury, *Adolescents' Conflicting Feelings about Permanency*, 24 CHILD LAW PRACTICE 161-169 (January 2006).

³⁴ See, e.g., New York City Administration for Children's Services, *Memorandum Re: Implementation of the Adoption and Safe Families Act, Part V: Family-Based Concurrent Planning for Youth with Goals of Independent Living* (New York City Administration for Children's Services 2003).

³⁵ See, e.g., Jenny Pokempner, *Permanency and Discharge Hearings for Foster Youth: A Protocol for Aiding Judges*, 39 CLEARINGHOUSE REVIEW, 168-169 (July-August 2005.)

³⁶ Eligibility for state AFDC-FC benefits ends when the youth turns 18, or 19 if the youth is in an education or training program and can demonstrate that he or she is reasonably expected to finish the program by his or her 19th birthday. Cal. Welf. & Inst. Code § 11403.