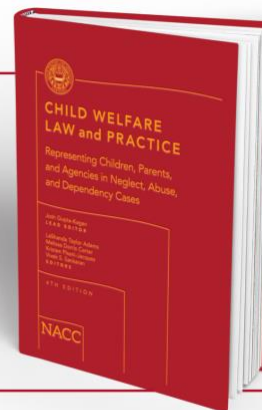


EXCERPTED FROM

CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN NEGLECT, ABUSE, AND DEPENDENCY CASES (4TH EDITION)

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Chapter 22

REPRESENTING TRANSITION-AGED YOUTH

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§ 22.1 • ABSTRACT

The transition to adulthood is a pivotal time in child development that can greatly affect a young person's trajectory in life. This is an active and important time for brain development and a time when young people are figuring out who they are, whom they are connected to and identify with, and their path and dreams for the future. For all young people, this time is both challenging and full of potential. Young people in foster care uniquely face many obstacles to a successful transition to adulthood, including the trauma they have experienced and the lack of adequate services and supports provided once youth enter the child protection system. The poor outcomes that young people aging out of foster care face are well-known² and reflect the system's collective

² MARK COURTNEY ET AL., CHAPIN HALL, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26 (2011), <https://www.aecf.org/resources/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth>.

failures, not the potential of these young people. These poor outcomes disparately affect youth of color who face institutional racism and bias.³

High-quality legal representation for transition-aged youth is necessary to reduce the obstacles to success faced by young people in foster care and to ensure that foster care is a positive intervention and a time of learning, growth, healing, and opportunity. High-quality legal representation requires lawyers to understand adolescent and young adult development, to engage and partner with young people in their representation, and to use the law to zealously advocate for their clients. First and foremost, attorneys for older youth must make permanency a priority and support youth in maintaining and developing relationships with their family and a network of supportive people who will be connected to them into adulthood and beyond. Attorneys must have the knowledge and ability to connect young people with the services and systems they need while in foster care and when they leave the system. Attorneys must also use their advocacy skills and power to protect young people from negative experiences, punitive consequences, and criminalization because of their experience in foster care.

This chapter will highlight laws and strategies that support excellent advocacy for transition-aged youth. It also will note the topics critical to representing transition-aged youth that are not covered in detail here but are covered in other chapters.

§ 22.2 • PARTNERING WITH YOUNG PEOPLE: POWER SHARING AND SPECIAL OBLIGATIONS IN REPRESENTATION

§ 22.2.A. *Providing Age and Developmentally Appropriate Representation*

Like the representation of children and youth of all ages, attorneys for adolescents and young adults must tailor their advocacy of and interaction with their clients to be age-appropriate and informed by developmental science.⁴ In addition to providing advocacy that allows young people to meet the milestones of the transition to adulthood and address barriers that get in the way of this progress, one of the most critical steps the attorney can take is supporting the development of decision-making capacity, competency, and confidence. This means learning to share power with clients and helping them develop the skills and vision to use that power to plan for their future, meet their goals, and know how to advocate for themselves. This gradual process, like development, happens through practice, repetition, and mistakes. Age-appropriate representation of an adolescent and young adult should be respectful of their growing autonomy while also providing support and guidance. Regardless of the model of representation—client directed, best

³ CHILD WELFARE INFO. GATEWAY, CHILD WELFARE PRACTICE TO ADDRESS RACIAL DISPROPORTIONALITY AND DISPARITY (2021), <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/> (summarizing the research).

⁴ See ch. 31, *infra*, for more detail on the legal representation of children and youth of all ages.

interest, or hybrid—as a young person ages and develops, their voices and wishes should guide, if not lead, representation.⁵ Regardless of state law, when a young person reaches the age of majority, the model of representation must be client directed because the young person is a legal adult.

Because of the growing autonomy and development of skills that young people are experiencing, the counseling role of an attorney becomes even more critical as youth approach and pass the age of majority. Attorneys share information, help youth think through options, and make decisions with them rather than for them in areas that should include permanency and family connections, the availability and benefit of extended foster care, and eligibility for benefits and programs that may support their transition. Many of the services for which older youth are eligible are voluntary. In addition, some of the processes to access services and benefits are not youth friendly. Although the child welfare agency is responsible for case planning and accessing services for young people, legal counseling on these issues can make the difference with service engagement as well as ensuring true access to services.

Case planning and court proceedings are two meaningful opportunities to engage young people in their case and representation. Federal law requires participation of young people in case planning and court proceedings. For example, beginning at age fourteen, the child welfare agency must document that the youth has been consulted in the development of the case plan, and the youth must be allowed to involve two people in case planning who are not a foster parent or part of the casework staff.⁶ For youth age fourteen and older, the case plan must document that they have been provided with a list of their rights as part of the case planning process, including rights in the areas of “education, health, visitation, and court participation,” the right to discharge documents, and the right to “stay safe and avoid exploitation.”⁷ The case plan must include a signed acknowledgement that the list of rights has been received and “explained to the child in an age-appropriate way.”⁸ In addition, the court should consult with the child in an age-appropriate manner regarding the proposed permanency and transition plans.⁹ If the permanency plan proposed is another planned permanent living arrangement (APPLA), the court must “ask the child about the desired permanency outcome.”¹⁰ These are minimum requirements, but they provide

⁵ The ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases and the NACC Recommendations for Representation of Children in Abuse and Neglect Cases recommend providing the traditional attorney-client relationship to the greatest extent possible and tailored to the age and developmental stage of the client. See *Practice Standards and Tools*, AM. BAR ASS’N (May 26, 2021), https://www.americanbar.org/groups/public_interest/child_law/resources/practice-standards/; NAT’L ASS’N OF COUNSEL FOR CHILD., RECOMMENDATIONS FOR LEGAL REPRESENTATION OF CHILDREN AND YOUTH IN NEGLECT AND ABUSE PROCEEDINGS (2021), <https://naccchildlaw.app.box.com/s/vsg6w5g2i8je6jrut3ae0zjt2fvgltsn>.

⁶ 42 U.S.C. § 675(5)(C)(iv).

⁷ 42 U.S.C. § 675a(b)(1) & (b)(2).

⁸ *Id.*

⁹ 42 U.S.C. § 675(5)(C)(iii).

¹⁰ 42 U.S.C. § 675a(a)(2)(A).

opportunities for attorneys to actively engage with clients and support and help them develop their advocacy and decision-making skills.

§ 22.2.B. Legal Advocacy Practice Tips

- ***Communicate and demonstrate to young people that the attorney believes in their power and potential:*** Let young people know that the attorney sees a future for them that they want to support them in achieving and that the attorney believes in their ability to successfully navigate their future. Encourage youth to think big and model for them how to develop concrete plans and opportunities to achieve their goals.
- ***Help youth develop self-advocacy skills:*** Court and case planning meetings are good opportunities for this.
- ***Take as many opportunities as possible to problem solve along with young people:*** Involve young people in thinking through how to resolve challenges.
- ***Engage young people in identifying supportive relationships:*** Respecting the relationships youth identify as important is a way to share power and develop trust.
- ***Provide proactive outreach and support:*** At this age youth need support to learn and master skills. Reaching out often and doing things in partnership should be the norm.
- ***Put in place mechanisms for youth to provide regular feedback on the quality of representation and to resolve any issues:*** Technology allows surveys to be administered easily and often. They can provide excellent feedback and help strengthen practice.

§ 22.3 • THE DEVELOPMENTAL PROCESS OF THE TRANSITION TO ADULTHOOD

§ 22.3.A. Brain Development and the Milestones of the Transition to Adulthood

Adolescence and emerging adulthood are a time of great developmental activity and potential. The time it takes a young person to transition to adulthood has grown over time for all young people, and the impact attorneys can have on a young person's future during this time is tremendous. The transition to adulthood from adolescence is a gradual process marked by increased independence and opportunities that must be balanced by consistent support, guidance,

and flexibility. Safe, nurturing relationships and parenting during this period can repair damage from earlier adverse childhood experiences and toxic stress.¹¹

A young person’s brain undergoes big developmental changes between the ages of fourteen and twenty-five, and this time is often marked by increased risk-taking, seeking greater independence, developing decision-making and coping skills, and exploring their sense of identity.¹²

It is during adolescence and early adulthood that [people] develop a personal sense of identity, establish emotional and psychological independence, establish adult vocational goals, learn to manage sexuality and sexual identity, adopt a personal value system, and develop increased impulse control and behavioral maturity. Chemical changes in the brain that prime adolescents for risk-taking present rich opportunities for them to learn from experience and mistakes and, with adult support, gain greater self-regulation, coping, and resiliency skills.¹³

Although law and policy are catching up to science, much work remains to ensure that young people are not criminalized or punished for normal adolescent behavior. Black, Latinx, and Indigenous youth—in and out of foster care—disproportionately face the consequences of authorities seeing them as older and punishing them for behaviors that are part of the transition to adulthood.¹⁴ Attorneys must protect clients by educating young people about their rights, partnering with defense attorneys, and arguing that the law must take adolescent development into account.

§ 22.3.B. The Impact of Trauma on the Transition to Adulthood

Most young people who enter the foster care system have experienced trauma, their removal constitutes another trauma, and many continue to experience ongoing trauma while in the system. These experiences have an impact on a young person’s transition to adulthood by affecting how they process information, react to interventions, and form relationships. Young people who have experienced trauma may be desensitized to taking certain risks; others may have trouble forming relationships due to past experiences of abuse or mistreatment. However, “[e]ven when a

¹¹ Rachael Zimlich, *Healthy Relationships Can Help Offset Toxic Stress*, CONTEMPORARY PEDIATRICS (Sept. 23, 2021), <https://www.contemporarypediatrics.com/view/aap-healthy-relationships-can-help-offset-toxic-stress>.

¹² “Adolescence is a period of ‘use it or lose it’ in brain development. Young people’s experiences during this period play a critical role in shaping their futures as adults. They can build and practice resiliency and develop knowledge and skills that will positively serve them throughout adulthood.” JIM CASEY, YOUTH OPPORTUNITIES INITIATIVE, THE ADOLESCENT BRAIN: NEW RESEARCH AND ITS IMPLICATIONS FOR YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE 2 (2011), <https://www.aecf.org/resources/the-adolescent-brain-foster-care>.

¹³ *Id.*

¹⁴ See, e.g., Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383 (2012–2013); VERA INST., JUST KIDS: WHEN MISBEHAVING IS A CRIME (2017), <https://www.vera.org/when-misbehaving-is-a-crime>.

young person has experienced complex trauma, neuroplasticity makes the brain capable of overcoming trauma and gaining resiliency in the face of risk.”¹⁵ Young people with experience in foster care have repeatedly noted that the child welfare system does a poor job of helping young people heal.¹⁶ Helping youth address current and past trauma and heal is an important component of advocacy for transition-aged youth. Building resilience is critical to prepare youth and teens to heal from past trauma and thrive through positive and challenging experiences.¹⁷

§ 22.3.C. The Importance of Relationships to the Transition to Adulthood

During the transition to adulthood, it is imperative that young people be connected to caring and consistent adults who provide safety, guidance, and support while they try new things, take risks, and develop their identity and goals. This group should include parents and family members as well as peers and other people in the youth’s community. Youth need adults who have the commitment and patience to let them experiment and make mistakes and help them learn from those mistakes. Family and supportive adult connections are crucial to this developmental time:

By the age of 25, young people need to be “connected,” that is, “embedded in networks—families, friends, and communities—that provide guidance, support, and help, both financial and otherwise, when they face the crises that are an inevitable part of the transition” to adulthood. It is by being connected that young people find love and acceptance for who they are, what they have experienced, and who they can become as caring adults.¹⁸

The impact of family and supportive connections plays out in financial and nonfinancial ways. Most youth rely on parents for a significant amount of material and nonmaterial support as they make the transition to adulthood, amounting to, on average, \$38,000 between the time a young person is eighteen and thirty-four and about 367 hours of family help per year.¹⁹ “Family help” can include help learning a skill (laundry, driving), conversations about setting goals and exploring aspirations, help filling out financial aid applications, or providing moral support and encouragement. The support of family results in concrete benefits for young people, such as getting

¹⁵ CASEY, *supra* note 12, at 4.

¹⁶ SARAH FATHALLAH & SARAH SULLIVAN, *AWAY FROM HOME: YOUTH EXPERIENCES OF INSTITUTIONAL PLACEMENTS IN FOSTER CARE* (2021), <https://www.thinkof-us.org/awayfromhome>.

¹⁷ Dr. Kenneth Ginsburg, Co-Founder and Director of Programs at the Center for Parent and Teen Communications, has identified seven essential building blocks of resilience: competence, confidence, connection, character, contribution, coping, and control. *The 7 Cs: The Essential Building Blocks of Resilience*, FOSTERING RESILIENCE, http://www.fosteringresilience.com/professionals/7cs_professionals.php (last visited Apr. 29, 2022).

¹⁸ CASEY, *supra* note 12, at 7 (quoting Michael Wald & Tina Martinez, *CONNECTED BY 25: IMPROVING THE LIFE CHANCES OF THE COUNTRY’S MOST VULNERABLE YOUTH 2* (2003)).

¹⁹ NAT’L POVERTY CTR., *POLICY BRIEF 3: FAMILY SUPPORT DURING THE TRANSITION TO ADULTHOOD 2* (2014), http://www.npc.umich.edu/publications/policy_briefs/brief3/.

a job, getting into college, or learning a skill. It also gives young people the safety, nurturing, and confidence they need to develop self-esteem, plan for their future, and feel valued and loved.

§ 22.3.D. Legal Advocacy Practice Tips

- Provide advocacy to help youth reach developmental milestones, such as getting a driver’s license, spending time with friends, and having more independence.
- Show young people how to do things and do them together rather than just telling them, such as making appointments, problem solving, and setting goals.
- Use arguments about adolescent development to challenge punitive and counterproductive responses or rules.²⁰
- Make the development, maintenance, and repair of a youth’s relationships with supportive adults a priority, and make sure they are receiving excellent parenting through consistent, nurturing, and supportive caregivers if they are not yet with family.
- Address trauma through referrals to behavioral health treatment as well as other interventions, including extracurricular activities and nonclinical supports. Explain the impact of trauma on behavior when necessary to support your advocacy.
- Help youth identify and advocate for activities that promote and build resilience.
- Unpack all “nos” to permanency. Many “nos” are a result of disappointment and trauma rather than a lack of desire for family.

§ 22.4 • PERMANENCY AND NORMALCY

§ 22.4.A. Permanency, Family, and Avoiding Group Care

Family, relationships with caring adults, and being part of a community are critical for adolescent and young adult development. Despite good intentions, the focus of the child protection system on family and permanency often is reduced as youth age and the anxiety related to preparation for aging out grows. As a result, permanency outcomes remain poor for older youth. For example, in 2016, half of teens aged sixteen and older who exited foster care left without achieving permanency, and the rate was 10% higher for Black youth and 11% higher for Hispanic

²⁰ We know that young people will benefit and learn from rewards and positive reinforcement during this developmental period, yet much of the child welfare system attempts to “teach” through punishment and loss of privileges.

youth than for their white peers.²¹ Attorneys must make permanency a priority, fight against the pull to focus solely on “preparation for adulthood” for legal and developmental reasons, and maintain a dual focus.

The law requires that youth’s connections to family should be preserved and strengthened and that achieving legal permanency is a priority for youth of all ages. The legal framework requiring court oversight of a youth’s relationships is one of the most critical tools a lawyer has to ensure their client is prepared for adulthood. The reasonable efforts requirements to prevent removal and finalize the permanency plan can be leveraged to ensure that permanency plans like reunification, adoption, and kinship guardianships are pursued for young people.²² Enforcing the relative notification requirement²³ and using family finding throughout the case can improve chances for legal permanency and build the youth’s network of support. The agency must make reasonable efforts to provide joint sibling placement and frequent visitation and contact when safety does not allow joint placement.²⁴ Guardianship and adoption by kin and non-kin are promoted by providing subsidies for these arrangements until age twenty-one if they were entered into at age sixteen or older.²⁵ Finally, the use of APPLA should be rare because it does not provide true legal permanency and the requirements for court approval have been enhanced.²⁶ However, the reality is that APPLA is still overused for older youth and still rarely provides permanency.²⁷

In addition to legal permanency, young people also deserve relational permanency: lifelong connections to caring adults who will provide a permanent, parent-like connection.²⁸ The

²¹ ANNIE E. CASEY FOUND., FOSTERING YOUTH TRANSITIONS 2 (2018), <https://www.aecf.org/resources/fostering-youth-transitions>.

²² 42 U.S.C. § 671(a)(15); 45 C.F.R. § 1356.21(b)(2) (2022). Reasonable efforts are required to prevent removal and safely return the child home. “If continuation of reasonable efforts [towards reunification] is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan 42 U.S.C. § 671(a)(15)(E)(ii). A finding of no reasonable efforts can result in a loss of federal Title IV-E reimbursement for placement maintenance for an eligible child and this can serve as a reason for the agency to take action.

²³ 42 U.S.C. § 671 (a)(29).

²⁴ 42 U.S.C. § 671 (a)(31).

²⁵ 42 U.S.C. § 675 (8)(B)(i)(III); 42 U.S.C. § 673 (d)(1).

²⁶ APPLA is prohibited as a permanency plan for youth under age sixteen. To select or maintain the plan of APPLA, the court must make the following findings: (1) that the agency has documented the intensive, ongoing, unsuccessful efforts to achieve reunification, adoption, guardianship, or placement with a fit and willing relative; (2) that APPLA is the best permanency plan for the child and there is a compelling reason that it is not in the best interest of the youth to return home, be placed for adoption, enter a guardianship arrangement, or be placed with a fit and willing relative; (3) that the youth has been asked about their desired permanency outcome; and (4) that the agency is taking steps to ensure the reasonable and prudent parent standard is being exercised and that the child has regular and ongoing opportunities to engage in age or developmentally appropriate activities. 42 U.S.C. § 675a(a).

²⁷ Fifty-one percent of young people age out to non-permanency. Many of those young people have the permanency plan of APPLA. ANNIE E. CASEY FOUND., *supra* note 21.

²⁸ *See What Is Permanence?*, ANNIE E. CASEY FOUND. (Feb. 6, 2012), <https://www.aecf.org/blog/what-is-permanence> (describing the distinction between legal and relational permanency).

experience of the COVID-19 pandemic reinforced the degree to which failing to have supportive connections compromises all aspects of a young person's life. Consistent, nurturing relationships is one of the few interventions known to be effective in helping young people heal and grow. Finally, young people are finding and contacting their family on their own.²⁹ Attorneys should support youth to strengthen and build the bonds they identify as important to them.

Older youth are at high risk for being placed in group care.³⁰ In addition to producing harms to young people and not providing effective treatment,³¹ group care facilities are not set up to nurture the development of supportive, family-like relationships for youth. Advocates can help ensure that youth and caregivers have services and resources that support family-based settings, ask that the services be court ordered when needed, and challenge the appropriateness of group care placements as a permanency strategy. Note that the Family First Prevention and Services Act (FFPSA) authorized federal funding after two weeks for group care settings that are "specialized settings."³² Unfortunately, there are concerns that these settings, which should be used only in exceptional situations, are likely to be overused for older youth. Advocates should be diligent about ensuring that the least restrictive guarantee is applied when a specialized setting is proposed, as well as about obligations under the Americans with Disabilities and Rehabilitation Acts.³³

²⁹ Results from the Midwest Study showed that young people are in contact with family members despite low rates of family-based permanency plans. Courtney et al., *supra* note 2, at 4–5.

³⁰ Thirty-four percent of youth ages 14 to 21 are placed in group care. The percentage increases as youth age. ANNIE E. CASEY FOUND., *supra* note 21.

³¹The following data points were summarized in CASEY FAM. PROGRAMS, WHAT ARE THE OUTCOMES FOR YOUTH PLACED IN CONGREGATE CARE SETTINGS? (2018), <https://www.casey.org/what-are-the-outcomes-for-youth-placed-in-congregate-care-settings/> (summarizing the research):

- Young adults who have left group care are less successful than their peers in family foster care.
- Youth with at least one group-home placement were almost 2.5 times more likely than their peers in foster care to become delinquent.
- Youth placed in group homes, rather than in family care, have poorer educational outcomes, including lower test scores in basic English and math.
- Youth in congregate care are also more likely to drop out of school and less likely to graduate high school.
- Youth who have experienced trauma are at greater risk for further physical abuse when they are placed in group homes, compared with their peers placed in families.

³² These settings are exceptions to the prohibition on use of IV-E funds on group care after two weeks: (1) a qualified residential treatment program (QRTP); (2) a setting specialized in providing prenatal, postpartum, or parenting supports for youth; (3) in the case of a child who has attained eighteen years of age, a supervised setting in which the child lives independently; and (4) a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims. 42 U.S.C. § 672(k)(2).

³³ 42 U.S.C. § 12101 et seq.; 29 U.S.C. § 701 et seq. (obligations include ensuring that individuals with disabilities are provided services in the least restrictive, most integrative setting and that they are provided reasonable accommodations).

§ 22.4.B. *Normalcy and Age-Appropriate Experiences*

Young people need opportunities to participate in extracurricular and enrichment activities to develop their talents and skills, express themselves, and connect with the community.³⁴ Although these experiences should be the norm for all children, system-imposed barriers often impede the ability of youth in care to have normal relationships with family and friends inside and outside of the system; participate in extracurricular, enrichment, or social activities; or experience many of the milestones non-system-involved peers take for granted. Failure to provide normalcy also affects a young person's chances at permanency, as these activities and connections with the community provide the context for the development of supportive adult relationships.

Provisions of the Preventing Sex Trafficking and Strengthening Families Act of 2014 attempted to remove barriers to normalcy by requiring that young people be supported in pursuing enrichment, extracurricular, and community-based activities and empowering caregivers to use the reasonable and prudent parent standard³⁵ to determine whether youth could participate in activities (eliminating requirements for agency or court authorization and providing liability protections for decision-makers).³⁶ Despite the federal law, young people continue to report that they do not experience normalcy as their non-system peers do.

§ 22.4.C. *Legal Advocacy Practice Tips*

- ***Leverage reasonable efforts requirements to keep youth with family and ensure that services are provided to connect them with family:*** Ask for a no-reasonable-efforts finding in court³⁷ if services are not being provided to advance the permanency goal and for services and resources to be ordered, including reunification services, family finding, child-focused recruitment, behavioral health services to address barriers to permanency, and/or financial and other concrete aid to support a permanency arrangement.³⁸

³⁴ YOUTH L. CTR., CLOSING THE EXTRACURRICULARS GAP: PRIORITIZING EXTRACURRICULAR ACTIVITIES AS A KEY INTERVENTION FOR CHILDREN AND YOUTH IN FOSTER CARE AND JUVENILE JUSTICE (2019).

³⁵ The term "reasonable and prudent parent standard" is defined at 42 U.S.C. § 675(10).

³⁶ 42 U.S.C. § 671(10), (24).

³⁷ Sample template pleadings can be found here: *Sample Pleading 1: Notice of Intent to Object to Reasonable Efforts Finding*, NAT'L ASS'N OF COUNSEL FOR CHILD., <https://www.naccchildlaw.org/resource/resmgr/webinars/resamplepleading1.docx> (last visited May 2, 2022); *Sample Pleading 2: Notice of Intent to Object Reasonable Efforts Finding*, NAT'L ASS'N OF COUNSEL FOR CHILD., <https://www.naccchildlaw.org/resource/resmgr/policy/resamplepleading2.docx> (last visited May 2, 2022).

³⁸ See, e.g., *In re Michael W.W.*, 45 A.D.3d 1227 (N.Y. App. Div. 2007) (finding that the agency did not make reasonable efforts to finalize the permanency plan for an older youth who was in group care); *In re Austin M.*, 964 N.Y.S.2d 57 (N.Y. Fam. Ct. 2011) (finding that reasonable efforts were not made to achieve the permanency plan for an older youth in that no efforts were made to engage the adoptive resource for the youth's siblings and sibling visitation was not occurring).

- ***Ensure that all federal and state laws related to family bonds and connections, placement with kin, and sibling placement and visitation are enforced:*** Enforce obligations for identifying and notifying relatives, relative placement preferences, and sibling placement and visitation guarantees.
- ***Ensure that the hierarchy of permanency goals³⁹ is followed and oppose the overuse of APPLA:*** Work with youth to identify the right permanency plan and advocate in case planning and in court for services to support the plan. The law was strengthened in 2014 to make the use of APPLA rare; the new requirements should be used to request actions and services in a case plan or in court to support family-based permanency.
- ***Challenge group home placements:*** Use the least-restrictive-setting obligation to request needed services and supports in the case plan or through a court order to make a family-based setting viable.⁴⁰ Require that the agency identify what the group care facility provides that cannot be provided in a family setting.
- ***Ensure the requirements related to placement in a Qualified Residential Treatment Program (QRTP) are met:*** FFPSA provides an array of protections to ensure that placement in a QRTP is appropriate and rare, but advocacy is needed to ensure they are followed.⁴¹
- ***Ensure that young people's needs are met if they are placed in group care and proactively address any issues:*** Address issues through court and licensing complaints. Ensure that plans are being made to transition to a family setting.
- ***Make sure that normalcy activities are included in the case plan:*** Include funding for participation, equipment, and transportation.⁴²
- ***Ensure that court findings and orders are made about normalcy activities:*** Request orders for participation in activities and for funds to be used to pay for activities.⁴³

³⁹ Reunification, adoption, kinship guardianship, placement with a fit and willing relative, and Another Planned Permanent Living Arrangement (APPLA).

⁴⁰ Children who are the placement and care responsibility of the child welfare agency must be placed in the least restrictive, most family-like setting. 42 U.S.C. § 675(5)(A).

⁴¹ Protections include an assessment by a qualified individual that includes the input of the young person, family, and permanency team; that the facility is accredited and following all trauma-informed practices; that the placement decision has been approved by the court; that all placement and services in the community have been exhausted; and that a lack of family-based settings is not the reason for the recommendation. 42 U.S.C. § 675a(c)(1).

⁴² 42 U.S.C. § 675 (5)(B).

⁴³ 42 U.S.C. § 675a(a)(3)(B) (requiring court findings on exercise of the reasonable and prudent parent standard and that the child has ongoing opportunities to participate in activities). Note that the normalcy requirement applies to

§ 22.5 • TRANSITION AND DISCHARGE PLANNING AND SERVICES

§ 22.5.A. *Transition to Adulthood Planning*

Preparing any young person for adulthood is a gradual process that happens over time and is the main goal of parenting. For children who grow up in families, parents and family members are the prime drivers and supporters of the transition. The centrality of supportive adults and family to the transition to adulthood is one of the reasons that permanency is a critical piece of transition planning advocacy. Although the transition for most young people is a fluid and individualized process, federal and state law do provide requirements to guide the transition process for young people in foster care.

Beginning at least at age fourteen, a young person's case plan must contain a written description of the programs and services that will help them prepare for the transition from foster care to a successful adulthood.⁴⁴ This transition plan should be individualized based on the needs of the young person and can include services such as life skills building, employment and education support and counseling, financial management, housing counseling and support, and relationship building. Beginning at age fourteen, the court must also make findings about the services needed to assist the youth to make the transition from foster care to a successful adulthood.⁴⁵ In addition to helping youth build specific skills and competencies, transition planning should also include ensuring that young people are connected to and served by other agencies and programs, depending on their needs. For example, a young person with a disability should be connected to disability serving agencies and programs as early as possible. Doing so will ensure they have all the services they need while in care and that they have completed any application and eligibility processes for services they may need as adults before discharge, including, but not limited to, Supplemental Security Income and Home and Community Based (HCBS) Medicaid Waivers (described in section 22.5.B, *infra*). In addition, it is critical to connect young people with civil legal services to address an array of issues that affect the transition to adulthood.⁴⁶

youth in all placement types and permanency plans, so it is appropriate to ask for normalcy findings in all cases regardless of permanency plan. *See* 42 U.S.C. § 671(a)(10).

⁴⁴ 42 U.S.C. § 675(1)(D).

⁴⁵ 42 U.S.C. § 675(5)(C)(i). The transition planning and service obligation applies to all young people regardless of funding. This is distinct from Chafee-funded services, which can be provided only to youth who are Title IV-E eligible.

⁴⁶ The following are legal issues that may affect transition-aged youth and may require civil legal advocacy: (1) identity theft, (2) child custody and support, (3) landlord/ tenant and general housing issues, including those related to Supervised Independent Living Placements, (4) special education matters, including creating IEP transition plans and challenging inadequate IEPs, (5) appeals of denials of benefits such as Supplemental Security Income and other public benefits entitlements, (6) expungement of a juvenile record, (7) immigration issues, (8) name and gender changes, (9) domestic/family violence restraining orders, and (10) employment law issues.

§ 22.5.B. *The Discharge Planning Obligation*⁴⁷

The transition or discharge plan should build on the transition-to-adulthood plan that begins at age fourteen. The discharge plan should demonstrate that the youth has a concrete plan for supporting themselves and thriving outside the child welfare system as an adult. The plan should be specific and outcome based, not referrals for services that have not been confirmed. Although federal law requires that the transition plan be developed at least ninety days before a youth turns eighteen or older and is discharged from care,⁴⁸ planning should begin well before that time. The plan must at least include “specific options” in the following areas: “housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services, and . . . information about the importance of designating another individual to make health care treatment decisions.”⁴⁹

Federal law prohibits the discharge of a youth aged eighteen or older who has been in foster care for more than six months without providing their vital documents.⁵⁰ The law requires that “official documentation necessary to prove that the child was previously in foster care”⁵¹ be provided to the young person. Without these documents, it is difficult to get housing, open a bank account, work, and establish eligibility for certain benefits.

Early discharge planning is especially important for young people with disabilities, immigration issues, justice system involvement and for LGBTQIA+ youth. Although these topics are covered in other chapters,⁵² a few considerations are noted here:

- Supplemental Security Income (SSI)⁵³ should be considered and applications made for youth with disabilities while a youth is in care, at least 180 days before discharge.⁵⁴ SSI

⁴⁷ Federal law refers to the transition plan as both the plan that begins at age fourteen and the plan that must be developed at least ninety days before discharge. For clarity, this chapter refers to the plan developed before a youth leaves care at age eighteen or older as the discharge plan.

⁴⁸ 42 U.S.C. § 675(5)(H).

⁴⁹ *Id.*

⁵⁰ The law states that the young person “is not discharged from care” without being provided these documents. This obligation includes the original or certified copy of the following documents: birth certificate; social security card; state identification card/driver’s license; health insurance information, including any cards needed to access care; and medical records. 42 U.S.C. § 675(5)(I).

⁵¹ *Id.*

⁵² These issues are covered in chs. 5, 6, 19, and 27.

⁵³ For a more detailed discussion of the impact of foster care on SSI benefits and related advocacy points, see ch. 28, *infra*.

⁵⁴ *SI 00601.011: Filing Supplemental Security Income (SSI) Applications for Disabled Youth Transitioning Out of Foster Care*, Prog. Operations Manual Sys., SOC. SECURITY (Oct. 4, 2010), <https://secure.ssa.gov/poms.nsf/lnx/0500601011>. This provision allows disabled foster youth to file an SSI application 180 days before expected discharge from foster care.

funds can be saved in a protected account⁵⁵ in preparation for the transition to adulthood.

- Young people with disabilities may need to access HCBS Medicaid Waivers after exiting care.⁵⁶ HCBS waivers provide long-term care and services for people who have significant disabilities and who are at risk of institutionalization. The Waiver program funds medical and non-medical services to people living in the home of a family member or in other community-based settings.⁵⁷ Young people with disabilities will need these supports as they lose the protections of the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) at age twenty-one.⁵⁸
- Expungement of juvenile records is critical to a successful transition to adulthood and should be part of the transition plan.
- LGBTQIA+ young people may face barriers to their transition that require specific advocacy steps, like proactively ensuring in the case plan and in court that youth are receiving affirming treatment and services, including health care, and that nondiscrimination provisions that explicitly prohibit discrimination based on gender identity or sexual orientation are enforced.⁵⁹

§ 22.5.C. Medicaid Coverage for Youth Formerly in Foster Care

Health care coverage is an important part of a good transition plan. Under the Affordable Care Act, young people who are in foster care at age eighteen or older and eligible for Medicaid at that time are categorically eligible for Medicaid until age twenty-six regardless of their income.⁶⁰

⁵⁵ An ABLÉ account is a special savings account that allows individuals to save funds received through SSI and related disabilities programs without having the amount affect means-tested benefits. Many benefits, such as SSI, have asset limits—for SSI it is \$2,000. An ABLÉ account allows an individual to save SSI funds without losing eligibility for critical benefits.

⁵⁶ For a list of state HCBS Waivers, see *State Waivers List, MEDICAID*, <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html> (last visited May 2, 2022).

⁵⁷ Under federal law, the Medicaid program has various requirements and restrictions on the provision of care. These include prohibitions on covering nonmedical services and limitations on the number of service hours provided. Section 1915(c) of the Social Security Act was enacted in 1981 and allows states to apply to the federal Medicaid agency to waive some of these requirements for the purpose of providing care and services to individuals with disabilities to avoid institutionalization. 42 U.S.C. § 1396n.

⁵⁸ 42 U.S.C. § 1396d(r)(5). All children under age twenty-one enrolled in Medicaid are entitled to the EPSDT benefit, which requires states to provide access to any Medicaid-coverable service in any amount that is medically necessary, regardless of whether the service is covered in the state plan.

⁵⁹ Ask that the court issue orders for placement changes, affirming treatment and services if they are not being provided based on the obligation to assure safety, permanency, and well-being. Referrals to legal services for a name change may also be needed.

⁶⁰ 42 U.S.C. § 1396a(a)(10)(A)(i)(IX).

Currently, states are not required to provide Medicaid for youth formerly in foster care in another state but have the option to do so through a Medicaid Waiver.⁶¹ Effective January 2023, the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act of 2018⁶² expanded Medicaid coverage for former foster youth such that all states will cover youth regardless of the state in which they were in foster care.

§ 22.5.D. Employment, Economic Capability, and Credit

Building economic capability is part of the transition-to-adulthood planning obligation and includes helping youth learn to manage and save money, build assets, and be in a position to pursue employment and a career. Many community-based organizations can assist young people with finding work, and many are funded through the Workforce Innovation and Opportunity Act of 2014,⁶³ which funds employment programs for youth ages fourteen to twenty-four who face barriers to education, training, and employment. Employment should be paired with instruction in how to save and manage money as well as counseling and exploration of career paths. Opening a bank account and understanding checking and savings should also be included in the transition plan.

Young people in foster care are at high risk for identity theft.⁶⁴ It can ruin their credit and make it difficult for them to do things like rent an apartment and take out a student loan. Beginning at age fourteen, youth must annually receive at no cost a copy of their consumer credit report and assistance in resolving any issue identified in the report.⁶⁵ Because the law is not clear on who is responsible for helping resolve any credit issues, advocacy is critical to ensure young people leave care with their credit intact.

§ 22.5.E. Postsecondary Education and Training

Postsecondary education and training, which are important in today's economy, should be realistic and achievable for youth in foster care. Yet, although large numbers of youth in foster

⁶¹ As of the date of publication, the states that have taken this option include California, Delaware, Kentucky, Massachusetts, New Mexico, South Dakota, Utah, Virginia, and Wisconsin.

⁶² The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, Pub. L. No. 115-271 (2018).

⁶³ Workforce Innovation and Opportunity Act (WIOA) of 2014, Pub. L. No. 113-128 (2014).

⁶⁴ IDENTITY THEFT RESOURCE CTR., THE IMPACT OF IDENTITY THEFT ON FOSTER YOUTH (2018), https://www.idtheftcenter.org/wp-content/uploads/2019/01/ITRC_dec18_white-pages-foster-youth_FINAL_web.pdf.

⁶⁵ 42 U.S.C. § 675(5)(I).

care want to pursue postsecondary education, only about 32% enroll in postsecondary education, and only 3% to 10% earn a bachelor's degree.⁶⁶ Here are a few things to keep in mind:

- Young people with experience in foster care may be eligible for funding support based on their status as an independent student for the purposes of federal financial aid, eligibility for Education and Training Vouchers (ETV), and state scholarships or tuition waivers;
- A few states and many universities and community colleges have established campus-based student support programs for youth with experience in foster care;⁶⁷
- Many states have developed campus-based support programs for low-income and/or first-generation college students from which youth in foster care can benefit ;
- Students with disabilities have a right to reasonable accommodations in postsecondary programs, but must request support;⁶⁸ and
- Vocational rehabilitation (VR) services are available in every state⁶⁹ for people age eighteen and older with disabilities and can provide assessments, direct support, referral, and payment for programming that will help a young person with a disability access training and employment.⁷⁰

§ 22.5.F. Housing: Family Unification Program Vouchers and Foster Youth to Independence Vouchers

Housing is a critical element of the transition plan. Rising housing costs and challenges that most young adults face entering the housing market make acquiring stable and affordable housing difficult. Advocates are urged to begin working with youth on a plan for housing well in

⁶⁶ NAT'L WORKING GRP. ON EDUC. & FOSTER CARE, FOSTERING SUCCESS IN EDUCATION: NATIONAL FACT SHEET ON THE EDUCATIONAL OUTCOMES OF CHILDREN IN FOSTER CARE 2 (2018), <https://foster-ed.org/fostering-success-in-education-national-factsheet-on-the-educational-outcomes-of-children-in-foster-care/> (summarizing the data). In comparison, youth generally enroll in college at a rate of about 69%, with about 32% completing their degrees. *Id.*

⁶⁷ Examples of campus-based support programs can be found here: *National Postsecondary Support Map*, CASEY FAM. PROGRAMS, <http://fosteringsuccessmichigan.com/campus-support> (last visited May 2, 2022).

⁶⁸ Reasonable accommodations for an individual with a disability are required by the Americans with Disabilities Act and the Rehabilitation Act. 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq. The protections of the Individuals with Disabilities Education Act end after high school.

⁶⁹ State VR agencies can be found here: *State Vocational Rehabilitation Agencies*, EARN, <https://askearn.org/page/state-vocational-rehabilitation-agencies> (last visited May 2, 2022).

⁷⁰ Examples of services include vocational exploration and training; career and interest assessments; trial-work experiences; on-the-job training; job coaching; supported employment; career planning; counseling, guidance, and referrals; technology support (aids, devices, training); assistance with transportation to services or programs; college attendance; medical and psychological diagnosis and treatment; and job placement.

advance of discharge and consider all options for subsidized and supportive housing. Advocates should also consider how a focus on permanency can assist with a housing plan. This section highlights two housing voucher programs that are targeted at youth with experience in foster care and are available in almost all jurisdictions.⁷¹

The Family Unification Program (FUP) is a housing voucher program with supportive services for two groups involved with child welfare: (1) families for whom the lack of adequate housing is a primary factor in placement of a child in out-of-home care or a delay in the child returning to the family from out-of-home care and (2) youth who are at least eighteen and not more than twenty-four years of age who left foster care or will leave foster care within ninety days, in accordance with a transition plan requirement, and are homeless or are at risk of becoming homeless at age sixteen or older.⁷² FUP vouchers for families do not have a time limit, while FUP vouchers for youth last for three years.⁷³ Local public housing authorities (PHAs) and child welfare agencies need to apply for FUP vouchers from the federal Department of Housing and Urban Development (HUD) and must agree to work together, with the child welfare agency agreeing to provide or arrange for supportive services.⁷⁴ The PHA and the child welfare agency distribute FUP vouchers to eligible families and young people.

The Foster Youth to Independence (FYI) initiative was built on the FUP program and was designed by and intended to be more responsive to young people. The initiative became law in December 2020.⁷⁵ FYI vouchers can be provided on demand at the request of the PHA and distributed quickly to young people. This process allows for a more streamlined and planned discharge from foster care, meeting the need for housing quickly, and flexibility in how services are provided. Young people have the option to extend the voucher for an additional two years if they participate in the Family Self Sufficiency Program, which helps them build assets.⁷⁶ All PHAs that administer housing choice vouchers, which is almost all of them, are eligible to request FYI vouchers for young people.

⁷¹ With the passage of the Fostering Stable Housing Opportunities Act and HUD guidance, FYI vouchers are available in almost all jurisdictions.

⁷² 42 U.S.C. § 1437f(x)(2).

⁷³ 42 U.S.C. § 1437f(x)(2).

⁷⁴ U.S. DEP'T OF HOUSING AND URBAN DEV., FOSTER YOUTH TO INDEPENDENCE INITIATIVE, PIH 2021-26 (2021), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-26.pdf>.

⁷⁵ The Fostering Stable Housing Opportunities Act was passed as part of the Consolidated Appropriations Act of 2021. The provisions can be found at 42 U.S.C. § 1437f(x). Federal rules can be found at *Implementation of the Fostering Stable Housing Opportunities Amendments*, FED. REG. (Jan. 24, 2022), <https://www.federalregister.gov/documents/2022/01/24/2022-01285/implementation-of-the-fostering-stable-housing-opportunities-amendments>. While FYI is modeled on FUP, FYI vouchers come from a separate pool called Tenant Protection Vouchers.

⁷⁶ 42 U.S.C. § 1437f(x)(5)(A). The Family Self-Sufficiency Program is a program through HUD that provides case management and allows individuals to place in an escrow account the increased rental charges that an individual pays when earnings rise, enabling the building of assets.

§ 22.5.G. *Legal Advocacy Practice Tips*

- ***Ensure that young people have a good transition-to-adulthood plan with clear goals and services that support those goals:*** If your client needs a service that is not provided in your jurisdiction, ask that it be contracted for.
- ***Ensure that findings and orders for transition to adulthood services are made in court:*** Federal law supports asking for court-ordered transition services.⁷⁷
- ***Ask the court to order agencies to confirm on the record, joining⁷⁸ them if necessary, that services are being provided:*** Some young people will need services and benefits from agencies outside the child welfare agency. Ask the court to order action or the presence of the agency in court.⁷⁹
- ***Ensure that discharge planning begins early:*** Concrete discharge planning should begin at least a year before a planned discharge.
- ***Ask for court orders for actions to be taken as part of transition plan:*** Orders could include having the agency apply for and confirm eligibility for SSI, making a referral for and reporting on the status of a housing voucher, etc.
- ***Ask the court to order actions to ensure valid immigration status:*** Orders could include referrals to immigration attorneys and/or payment for legal services, requirements to procure a birth certificate, payment of fees for immigration filings, or a request for the required findings to secure Special Immigrant Juvenile Status.
- ***Challenge discharges from care when there is not an adequate transition plan:*** Use federal law for these challenges and any parallel state law if available. Use the law to ask for continued placement and or services.

⁷⁷ See, e.g., *In re Andrea D.*, 883 N.Y.S.2d 696 (N.Y. Fam. Ct. 2009) (finding that the juvenile court had authority to order the child welfare agency to provide a copy of the youth's certified birth certificate and facilitate and fund driver's education classes for her based on state and federal transition plan requirements, the obligation to promote permanency and well-being, and the *parens patriae* authority of the court).

⁷⁸ Some states, including California, have court rules that allow for joinder of agencies. Attorneys are urged to ask the court to order that an agency representative appear before the court as part of its plenary authority even if specific joinder rules do not exist. See CAL. R. CT. 5.575, Joinder of Agencies.

⁷⁹ See *In re: Adoption/Guardianship of Dustin R.*, 128 A.3d 80 (Md. 2015) (finding that the juvenile court had jurisdiction and statutory authority to order mental health agency to develop and approve written plan of clinically appropriate services in the least restrictive setting that ensured that child with disabilities would continue to receive services, where the child was not yet twenty-one years old when juvenile court issued order, where such services were required to protect child's health and well-being).

- ***Ensure that the youth has been fully involved as a partner in developing the transition plan:*** Include family and other supportive adults so they can support plan development.
- ***Ensure that a youth has been found eligible for Medicaid as a former foster youth before leaving foster care:*** Ask for verification of eligibility, including the new health plan or insurance card or number, as part of case planning and court processes. If the youth is not eligible for Medicaid as a former foster youth,⁸⁰ ensure that action is taken to establish eligibility for Medicaid under another category or by ensuring that a health plan is purchased as part of the transition planning requirement.
- ***Use the case planning meeting to ensure that the youth has received their annual credit report and ask for court orders to address any unresolved issues:*** Ensure that an individual or organization has been identified to help address any issues related to the report. Ask that the child welfare agency be ordered to take action to resolve the issue or identify a specific person or entity who will.
- ***Help ensure that youth ages eighteen and older understand taxes and help them file:*** Some young people may be eligible to receive funds due to them as a result of working or being a parent.
- ***Make sure that services and supports related to secondary and postsecondary education and training goals are included in the child welfare transition plan:*** This can include exploring and applying for postsecondary programs; helping with applying for financial aid, tuition waivers, and scholarships; tutoring support; connecting with campus-based supports⁸¹ and counseling; and/or helping a youth with requests for disability accommodations.⁸²
- ***Ensure that the youth completes the Free Application for Federal Student Aid (FAFSA) and identifies themselves as being a current or former foster youth to qualify for independent status for the purposes of federal financial aid:*** Youth who were in foster care at age thirteen or older are considered independent students and only their income (not their parents') is counted to determine the financial aid package. Make sure that youth who are not eligible for federal financial aid due to their immigration

⁸⁰ A young person may be eligible for Medicaid as a low-income individual in states with Medicaid expansion. Youth with SSI will also receive Medicaid.

⁸¹ See ch. 16, *supra*, for more information on TRIO Programs. 20 U.S.C. § 1070a-14. Although this list has not been updated recently, it provides some information on the institutions that have foster care specific student support programs: *National Postsecondary Support Map*, CASEY FAM. PROGRAMS, <http://fosteringsuccessmichigan.com/campus-support> (last visited May 2, 2022).

⁸² See ch. 16, *supra*, for more information on leveraging the transition plan in the IEP.

status receive assistance in applying for scholarships as early as possible and that planning begins to ensure these youth are supported with funding.

- ***Ensure that youth with disabilities are referred for VR service:*** Help youth develop a VR plan that includes all needed supports.
- ***Encourage your local PHA and child welfare agency to apply for FUP and draw down FYI vouchers:*** Although FUP vouchers are distributed through an application process, PHAs can request FYI vouchers from HUD at any time and can request them individually or in groups.
- ***Request that the court order a referral for a FUP or FYI voucher:*** Some young people face barriers to finding an apartment that will take a voucher and rent to a young person, so support the process until a youth has entered into a lease and moved in.

§ 22.6 • EXTENDED FOSTER CARE, CHAFEE, AND EDUCATION AND TRAINING VOUCHERS

§ 22.6.A. *Extended Foster Care*

Since 2008 and the enactment of the Fostering Connections to Success and Increasing Adoptions Act,⁸³ states have had the option to provide extended foster care and receive federal Title IV-E funds to share the cost of care.⁸⁴ Extended foster care is the provision of foster care services between ages eighteen and twenty-one, including living arrangements, case management, support services, and case and court review. Extended foster care is becoming the norm across the country. Before the COVID-19 pandemic, thirty-two states had an extended foster care program that used Title IV-E funds. Extended foster care, even for short times, has been shown to improve adult outcomes and reduce poor outcomes like homelessness, unemployment, and reliance on public benefits.⁸⁵ Extended foster care has also been shown to produce a good return on investment.⁸⁶

⁸³ Fostering Connections to Success and Increasing Adoption Act, Pub. L. No. 110-351 (2008).

⁸⁴ 42 U.S.C. § 675(8)(B).

⁸⁵ Rachel Rosenberg & Samuel Abbott, *Supporting Older Youth Beyond Age 18: Examining Data and Trends in Extended Foster Care*, CHILD TRENDS (June 3, 2019), <https://www.childtrends.org/publications/supporting-older-youth-beyond-age-18-examining-data-and-trends-in-extended-foster-care>.

⁸⁶ There is a return on investment of \$4.1 billion per year per cohort of youth aging out of foster care if they are supported in achieving outcomes similar to their peers in families. ANNIE E. CASEY FOUND., FUTURE SAVINGS: THE ECONOMIC POTENTIAL OF SUCCESSFUL TRANSITIONS FROM FOSTER CARE TO ADULTHOOD (2019), <https://www.google.com/url?q=https://www.aecf.org/resources/future-savings&sa=D&source=docs&ust=1643396689809023&usg=AOvVaw059VU1PSZYxIwIjAxTXtwy>.

States take the option to receive Title IV-E funds for extended foster care by incorporating federal requirements in their law or policy, including the five participation requirements for young people. To be eligible for extended care, a young person must be

- (I) completing secondary education or a program leading to an equivalent credential;
- (II) enrolled in an institution which provides post-secondary or vocational education;
- (III) participating in a program or activity designed to promote, or remove barriers to, employment;⁸⁷
- (IV) employed for at least 80 hours per month; or
- (V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.⁸⁸

Youth with juvenile or criminal justice system involvement are eligible for extended foster care when they meet the above criteria. These young people can greatly benefit from extended support.

Although extended care has been shown to have a positive impact on life outcomes, many youth elect to leave care at age eighteen due to frustration with the system and lack of age-appropriate treatment in extended care.⁸⁹ Attorney advocacy can help young people see the value of extended care and can also make the conditions and services available more engaging and responsive to young adults.

The opportunity to provide extended foster care brought with it the option for reentry. Reentry is the process by which young people who leave care at age eighteen or older can reenter foster care before reaching age twenty-one. This option is available in most states with extended foster care and provides a safety net for young people who leave care and face challenges or need time to determine whether extended care is right for them.⁹⁰ Although there have been some

⁸⁷ This is a very flexible category and can include a formal program or an array of services that help a young person address their individual barriers to employment. Making the argument that the services or activities the client is participating in address their barriers to employment can be the difference between staying in care and being discharged.

⁸⁸ 42 U.S.C. § 675(8)(B)(iv).

⁸⁹ Rosenberg & Abbott, *supra* note 85.

⁹⁰ *National Extended Foster Care Review: 50-State Survey of Law and Policy*, JUV. L. CTR. (May 30, 2018), <https://jlc.org/resources/national-extended-foster-care-review-50-state-survey-law-and-policy>.

improvements in the reentry process, many young people report that the process is not youth friendly and can be burdensome and that the assistance of counsel can be critical.

§ 22.6.B. Chafee Services and Education and Training Vouchers

The transition-to-adulthood planning requirement applies to all young people ages fourteen and older and is not tied to a specific funding stream. In contrast, the John H. Chafee Foster Care Program for a Successful Transition to Adulthood (Chafee), which includes ETV, is a particular funding stream that is part of Title IV-E that can be used to provide specific services to a group of eligible young people.⁹¹ Chafee services, formerly called “Independent Living Services,”⁹² include a broad array of services, such as life skills training, services to prepare for employment and education, driving instruction, and normalcy activities.⁹³ Chafee funds can also be used to provide financial assistance and other concrete supports to young people. In addition, states can use up to 30% of their Chafee funds to provide housing services, which are called “room and board,” to young people who have aged out of foster care at eighteen or older.⁹⁴

Chafee eligible youth include (1) youth who are in care and are age fourteen or older; (2) youth who were adopted or entered kinship guardianship at age sixteen or older; (3) youth who were reunified at age fourteen or older; and (4) youth who aged out of care at eighteen or older and are under age twenty-one or twenty-three (depending on the state).⁹⁵ Chafee-eligible young people do not lose their eligibility if they come into contact with the justice system. States must provide Chafee aftercare services to any eligible youth residing in their state regardless of whether the youth was in foster care in that state.⁹⁶ FFPSA gave states that have extended foster care the option to provide Chafee aftercare services until age twenty-three.⁹⁷

⁹¹ 42 U.S.C. § 677.

⁹² This shift in language reflects the growing understanding that interdependence—rather than independence—along with growing competency development is the goal for youth as they enter adulthood.

⁹³ The purpose and uses of Chafee funds can be found at 42 U.S.C. § 677(a).

⁹⁴ 42 U.S.C. § 677(b)(3)(B).

⁹⁵ 42 U.S.C. § 677(a).

⁹⁶ 42 U.S.C. § 677(a)(4) & (b)(3)(A)(i); *see also* 3.1F *Independent Living, Question 3*, in CHILD:’S BUREAU, ADMIN. FOR CHILD. & FAMS., U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD WELFARE POLICY MANUAL (2022), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?id=3 (clarifying that the state where the young person resides is responsible for providing Chafee services after a young person ages out).

⁹⁷ The following jurisdictions have opted to provide Chafee services for youth until age twenty-three: Colorado, Connecticut, the District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Maine, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oregon, Pennsylvania, Puerto Rico, Utah, Vermont, Virginia, Washington, West Virginia, the Prairie Band of Potawatomi, and the Santee Sioux Nation.

ETV provides Chafee-eligible youth up to \$5,000 annually to cover the cost of attendance⁹⁸ at programs of postsecondary education and training.⁹⁹ FFPSA allows all states to provide ETV until age twenty-six, raising the age of eligibility from twenty-three.¹⁰⁰ Young people can receive ETV for up to five years. States may use ETV funds for graduate school; however, not all states have opted to do so. While a youth is in foster care, the state in which they are in care must provide ETV, but a youth may take those funds out of state. As with Chafee aftercare, after a youth leaves foster care, the state of residence must provide ETV.¹⁰¹

Chafee and ETV eligibility are tied to Title IV-E eligibility, which includes requirements related to immigration status. A young person must be a “qualified alien”¹⁰² to be IV-E and Chafee eligible. For this reason—and many others—it is essential to identify young people with immigration issues who need legal services as soon as possible.

§ 22.6.C. Legal Advocacy Practice Tips

- **Notify young people about the option for extended foster care if it exists in their state and talk to them about the benefits of remaining in care:** Help young people understand how extended care can help them and how attorney advocacy can help ensure that the services and supports they receive are age appropriate.
- **Continue permanency advocacy:** Make sure that efforts to achieve permanency and connections with caring adults continue.
- **Help youth establish eligibility for extended foster care and ensure that their case plan provides age-appropriate goals:** Some states apply unnecessarily limited interpretations of the participation criteria (which are very flexible) that are not consistent with federal law and should be challenged.

⁹⁸ The cost of attendance is defined in the Higher Education Act at 20 U.S.C. § 1087ll and can include tuition, fees, books, computers, transportation, childcare, room and board, and expenses related to a disability for a student with a disability.

⁹⁹ Eligible institutions include those that are defined in 20 U.S.C. § 1002(a) of the Higher Education Act.

¹⁰⁰ 42 U.S.C. § 677(i)(3). States do not need to take any action to provide eligibility to age twenty-six; however, many states do not offer eligibility to age twenty-six due to lack of funds. FFPSA increased the age of eligibility without appropriating additional funds.

¹⁰¹ For more details, see 3.5 *Independent Living, Educational and Training Vouchers*, in CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMS., U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD WELFARE POLICY MANUAL (2022), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=290.

¹⁰² See 84.B *Title IV-E, General Title IV-E Requirements, Aliens/Immigrants*, in CHILD.’S BUREAU, ADMIN. FOR CHILD. & FAMS., U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD WELFARE POLICY MANUAL (2022), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=45.

- ***Ensure that dual system–involved youth and youth with experience in the juvenile justice system are screened for and found eligible for extended care:*** In almost all states, dual system–involved youth¹⁰³ are eligible for the state’s extended care system. In a few states, youth with only juvenile justice system involvement are eligible.
- ***Advocate for age-appropriate placements and services as part of the dispositional obligation of the court.***¹⁰⁴ Use case planning and court advocacy to challenge overly restrictive rules, placements, and requirements that are not effective and are likely to result in disengagement from extended care. Remember that placement with family is an option that can be supported.
- ***Oppose improper discharges from extended foster care when a young person wants services:*** Use the flexible eligibility criteria¹⁰⁵ to ensure that youth are not improperly pushed out of extended care. This includes opposing discharges when otherwise eligible young people are arrested or become involved in the juvenile or criminal justice system. Use the obligation to develop a transition plan before discharge to oppose improper discharges.
- ***Assist youth with reentry if it is available in the state:*** Many states do not have youth-friendly mechanisms for reentry, and young people may need assistance to successfully reenter.
- ***Make sure young people are referred for all available Chafee services:*** Request access to services and activities that meet the needs of your client.
- ***Ensure that youth who come into contact with the justice system have access to Chafee and ETV services.***
- ***Make sure that youth who have aged out have access to Chafee aftercare services, including room and board:*** Include specific orders for aftercare services in the final transition plan and let youth know about the option for aftercare.

¹⁰³ Here, “dual system–involved youth” means young people who are involved in some way in both the child welfare and juvenile justice systems.

¹⁰⁴ Most states have requirements in state law that the court determine a disposition that is in the best interest of the youth and serves their well-being that can be used to support such orders. Here is an example of a motion that used such a provision in Pennsylvania law along with the requirement for the least restrictive placement: *Template Motion: Motion to Amend the Deposition*, https://docs.google.com/document/d/1SAotbr6u7XGHG_sHMbh_u8ycTIVcOIXO/edit (last visited May 2, 2022).

¹⁰⁵ 42 U.S.C. § 675(8)(B)(iv)(III), (V).

- ***Make sure youth have applied for ETV and help with verification of eligibility if there are any challenges, including if they leave the state:*** Because there is variation in how states operate their ETV programs, ensure that youth have applied for and are found eligible for ETV or ask for an order to assist the youth with this process.
- ***Ask the court to order services or funds as part of the transition plan for youth who are not Title IV-E eligible:*** A youth who is not IV-E and Chafee eligible due to immigration status should still be provided transition services but may need them to be court-ordered to ensure their provision and funding.¹⁰⁶

§ 22.7 • EXPECTANT AND PARENTING YOUTH

§ 22.7.A. Supporting Expectant and Parenting Youth

Expectant and parenting youth in foster care must face the challenges of the transition to adulthood while also learning and managing the challenges of parenting. They will need support and advocacy to ensure they get the services they need to flourish. Expectant and parenting youth should receive prenatal and postnatal care and support. Referrals to home visiting programs¹⁰⁷ should be made as soon as possible. These programs provide vital services and connect parents with many valuable community-based resources. The youth should also be offered services and benefits that support their parenting and enable them to carry on with their transition goals related to school and work. For example, parenting youth should also be offered parenting skills support and instruction, assistance in finding and paying for quality childcare, and additional funds to cover the supplies and items needed to parent.

Parenting youth may also be eligible for an array of public benefits for their child even while in foster care, such as the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and possibly Temporary Aid to Needy Families (TANF). Many parenting youth will qualify for state-subsidized childcare, and the child welfare agency should, as part of the agency's obligation to provide individualized case planning and transition services, fund childcare in the event the young person does not meet eligibility criteria or there is a waiting list. Lastly, and perhaps most importantly, expectant and parenting youth need nurturing, supportive parenting to support them through this critical period of their (and their child's) development and to provide positive role modeling and

¹⁰⁶ Note that immigration status may affect eligibility for federal financial aid such as a Pell grant and state aid, including tuition waivers. In such cases, the attorney can ask the court to order funding for the cost of education and training for these youth to ensure they have access to an education.

¹⁰⁷ For more information about home visiting programs, which may go by different names in each state, see *Home Visiting Program: State Fact Sheets*, HRSA, <https://mchb.hrsa.gov/maternal-child-health-initiatives/home-visiting/home-visiting-program-state-fact-sheets> (last visited May 2, 2022).

mentoring. Ensuring that youth and their children are connected to a strong community of family and supportive adults is one of the most important interventions to help them thrive.

Although young parents in foster care have the same legal rights to parent as their out-of-care peers, often their rights are not sufficiently respected, and this can have disastrous consequences for both the parents and child. For example, fathers are often not included in planning and service provision. The rights of parents in foster care should be supported and not interfered with unless there are allegations of abuse and neglect that follow the process and protections available under the law. Simply being in foster care is not a legal ground to interfere with a parent's rights, but the practice occurs across the country and must be challenged.¹⁰⁸ Being in foster care means that young parents are scrutinized and surrounded by mandated reporters.

§ 22.7.B. Legal Advocacy Practice Tips

- ***Continue permanency advocacy:*** Parenting youth need the love and support of parents and family.
- ***Provide placement advocacy so that the parent remains placed with their child in the least restrictive setting:*** Parenting youth in foster care have a right to be placed in the least restrictive setting and should not be separated from their child due to convenience or lack of placements.
- ***Ensure that expectant and parenting youth are offered and referred for all available support services and benefits while they are in care and as they discharge:*** This should include home visiting programs, benefits like TANF and WIC, and childcare.
- ***Make sure expectant and parenting youth continue to receive all permanency and transition services:*** Youth may need additional supports like childcare to receive the full benefits of these services.
- ***Help parenting youth access civil legal services if they are needed for custody and child support matters.***¹⁰⁹
- ***Oppose any improper infringements of a parenting youth's rights:*** Ensure that youth are represented as a parent if any report or allegation of abuse or neglect is made. The attorney should not take on that representation if they have a conflict based on their current role.

¹⁰⁸ *In re Hall*, 703 A.2d 717, 719 (Pa. Super. Ct. 1997) (determining that the law does not support “an adjudication of dependency under the Juvenile Act simply because the mother is in foster care or simply due to the age of the parents”).

¹⁰⁹ See ch. 26, *infra*, for more information on collateral legal services.

- ***Include fathers in advocacy:*** Be proactive in discussions with clients who are fathers and provide them information about their rights and how they can be involved in their child's life if they are not already.

§ 22.8 • CASE EXAMPLES

§ 22.8.A. *Case Example 1: Advocating for Permanency in Case Planning*

Facts: Kierra is sixteen years old and has been given the goal of APPLA. She is placed in a group home after multiple placements in residential facilities. She tells her attorney she does not know what APPLA is but is fine with it because she was told she will get her own apartment and she is tired of placement moves and living with so many people. After counsel explains to Kierra what APPLA is, the difference between placement options, transition services, and permanency, she is open to exploring options other than APPLA. Kierra provides her attorney with a list of five people who are important to her. She also mentions that her access to counseling services has been inconsistent because of her placement moves. She tells her attorney that she used to play basketball at her old school and had many friends as well as supportive coaches as part of the team, and she misses that activity. Kierra is reluctant to consider another placement change because of her many moves but is open to considering placement with a family if she gets to meet them and decide if it will work for her. She also mentions that she just found and reconnected with her father on Facebook and is scared, but also excited that that could work out.

Action Plan: The attorney informs the case planning team that they will be asking for a goal change from APPLA to kinship guardianship at the next court hearing and would like to explore other permanency options and identify permanency services at the case planning meeting.

At the case planning meeting, the attorney asks that the following services be included in the case plan and asks that a status update meeting be held in one month:

- Completion of family finding and review of the case file for family, kin, and other supportive connections.
- The caseworker working with Kierra to develop a plan to reach out to the five people she identified as important to her and discuss how they can be included in her life.
- Identification of a basketball team (from her previous school or in the community) and development of a plan for participation.
- Making regular counseling appointments and ensuring that Kierra has transportation to attend.

- Working with Kierra to develop a plan to reach out to her father and supporting her in the process of reconnection.
- Making referrals for family foster care placements and development of a plan with Kierra and the referral agencies so that she can have input in the placement decision.

The attorney is prepared to ask that these services and actions be ordered by the court if they are not included in the case plan and support the request for those orders by citing to the reasonable efforts requirement and demonstrating that the agency has not met the standards to assign the goal of APPLA.

§ 22.8.B. Case Example 2: Opposing an Improper Discharge

Facts: Selina, age twenty, is being discharged from extended foster care due to “noncompliance” because she was arrested and is no longer enrolled in a vocational program. Selina was arrested last month and was held for over a week. As a result of the arrest, she is being asked to leave her placement and was disenrolled from her vocational program after missing too many days when she was in custody after her arrest. The agency has asked for a hearing to discharge the case.

Action Plan: The attorney ensures that the child welfare and placement agency will take no action to discharge Selina from her current living arrangement and is prepared to file an emergency motion if she is discharged without a plan for immediate placement. The attorney meets with Selina to make sure she is doing okay, is safe in her placement, and has representation for the criminal matter. The attorney and Selina together contact the vocational program and learn that although reenrollment is not possible at this time, she is welcome to begin the next session, which starts in two months. The attorney requests documentation of this from the program contact. The attorney and Selina develop a plan to meet with a vocational counselor at the local Workforce Innovation and Opportunity Act (WIOA) program and to work on her resume with her independent living worker, who will also develop a job search plan. The attorney asks Selina to get the contact information of the person she meets at the WIOA program so they both can follow up.

The attorney submits a motion to oppose the discharge that makes the following arguments:

- Selina is eligible for extended foster care under category 3, participating in a program or activity designed to promote, or remove barriers to, employment. The motion lists the activities in which she is taking part to reduce barriers to employment and her plans to reenroll in her vocational program in two months.
- Selina’s eligibility for extended foster care is not changed by her arrest. She remains eligible, and supporting her in the criminal matter should be addressed through case planning.

- Selina cannot be discharged without a transition plan, and no such plan has been developed and presented to the court. Selina is at high risk for homelessness if she is discharged without a plan.

To supplement the motion, the attorney prepares all documentation related to the activities in which Selina is engaged and the lack of a transition plan. The attorney subpoenas or requests the following people to attend court: a representative from the child welfare agency who can describe agency policy related to extended foster care eligibility and people who can speak to Selina's activities related to reducing barriers to work and reenrollment.

§ 22.9 • RESOURCES

KENNETH R. GINSBURG & ZACHARY BRETT RAMIREZ MCCLAIN, *REACHING TEENS: STRENGTH-BASED, TRAUMA-SENSITIVE, RESILIENCE-BUILDING COMMUNICATION STRATEGIES ROOTED IN POSITIVE YOUTH DEVELOPMENT* (2d. ed., 2021).

Jenny Pokempner, *Transition Planning for Youth with Disabilities from the Child Welfare System to Adulthood*, JUV. L. CTR. (June 16, 2015), <https://jlc.org/resources/transition-planning-youth-disabilities-child-welfare-system-adulthood-2nd-edition>.

Rachel Rosenberg & Samuel Abbott, *Supporting Older Youth Beyond Age 18: Examining Data and Trends in Extended Foster Care*, CHILD TRENDS (June 3, 2019), <https://www.childtrends.org/publications/supporting-older-youth-beyond-age-18-examining-data-and-trends-in-extended-foster-care>.

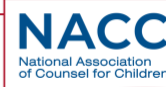
JIM CASEY, YOUTH OPPORTUNITIES INITIATIVE, *THE ADOLESCENT BRAIN: NEW RESEARCH AND ITS IMPLICATIONS FOR YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE 2* (2011), <https://www.aecf.org/resources/the-adolescent-brain-foster-care>.

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EXCERPTED FROM

CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN NEGLECT, ABUSE, AND DEPENDENCY CASES (4TH EDITION)



Sarah Fathallah & Sarah Sullivan, *Away from Home: Youth Experiences of Institutional Placements in Foster Care*, THINK OF US (July 21, 2021), <https://www.thinkof-us.org/awayfromhome>.

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JUV. L. CTR., COMMUNITY LEGAL SERVS., & HOMELESS ADVOCACY PROJ., SSI FOR YOUTH TRANSITIONING OUT OF FOSTER CARE: A TOOLKIT FOR ADVOCATES (2016), https://jlc.org/sites/default/files/publication_pdfs/Final%20SSI%20Toolkit.pdf.