



Children's Commission.

Attorney Resource Letter:

For Attorneys Handling Child Protective Services Cases

December 2, 2016

The Importance of Youth Voice in Court Proceedings

The Texas Family Code is clear that children and youth must attend permanency review hearings, and places additional duties on attorneys ad litem, judges, and the child welfare agency to meet with children in advance of court hearings. Despite many improvements over the past several years, Texas courts still do not consistently engage youth in meaningful participation in the court process. Ensuring that youth voice is heard and considered continues to be a challenge. This lack of youth involvement results in foster youth feeling disconnected from the process, and judges not reaping the benefit of their input.

Q: What does the law require?

A: Chapter 263 of the Texas Family Code mandates that all children who are in the conservatorship of DFPS attend all permanency hearings. Specifically, Section 263.302 states that the child shall attend each permanency hearing, unless the court specifically excuses the child's attendance, and that the court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and the court determines it is in the best interest of the child.

Q: Are there any exceptions to 263.302?

A: Yes, the judge can make an individual determination that excuses that child from attending a specific hearing. However, issuing a blanket order excusing a specific child or all children from attending permanency hearings, is not considered best practice.

Q: Why isn't it sufficient for me to speak for my client since I am his/her legal representative?

A: There have been many studies by the ABA as well as Court Improvement Programs around the country on this singular issue, all with similar findings that foster youth repeatedly express the desire to be involved in decisions about their lives. Youth involvement contributes to the young person's well-being by giving the youth a sense of control, a better understanding of the process, and an opportunity to offer first-hand information. The judge benefits from youth involvement by receiving the young person's input first hand.

Here are some other benefits of involving youth in their permanency hearings:

- Children are told that judges, not caseworkers, foster parents, or parents make the important and final decisions about their case.

- Seeing the judge in person not only humanizes the process for the youth, it helps them accept both the outcome of the court's decisions and the fact that other adults in their life don't control those decisions.
- Attorneys may not always be the most reliable or informed advocate for their child clients.
- Caseworkers frequently change and are unfamiliar with the child and their case.
- Many former foster youth report that meeting with the judge was the most important factor in changing the trajectory of their lives.
- Hearings can present an opportunity for the child to visit his/her parents and siblings.
- Foster parents and caregivers attend when they bring the child or youth to court, which provides an opportunity for the attorney to also check in with the child's caregiver.

Q: What about transportation issues and missing school?

A: Distance from home, and transportation to court, are generally considered the biggest and most intractable barriers to children and youth attending permanency hearings. However, every Child Placing Agency (CPA) is contractually required to arrange for and ensure children attend their court hearings. When this is not feasible, the Office of Court Administration (OCA) offers secure and confidential video conferencing, which enables children to participate in permanency hearings without being physically present in the courtroom. This technology includes video capability from mobile devices, multiparty video conferencing, and email and calendar invitations.

Generally, children or youth should not miss important school events such as end of semester or end of course testing to attend court, but the Texas Education Code provides that attending court when in foster care is an excused absence. Courts should consider at the Status Hearing whether permanency reviews can be scheduled around the child's school schedule. Again, participation through technology should be considered.

Q: How do I ensure it's a worthwhile experience for my client?

A: There are many factors that affect the child's experience in court, including preparation, engagement, docketing, and court consultation with the child. Here are some tips:

- Prepare your client for the hearing and court experience by explaining the possible and likely outcomes of the hearing.
- Let them know when and how their meeting with the judge will take place
- Review the Department's court report and other parties' positions with your client, as appropriate, prior to the hearing.
- Prepare the court's staff to make sure they are ready for your client's visit.
- After the hearing, review the outcome with your client, explaining the court's reasoning behind their decisions and what the next steps will be.

Q: How do I ensure the judge gets the information he/she needs to make good decisions?

A: Even young children have the competence to tell adults what they want and need when they are questioned in age-appropriate ways.

- Interview your client in advance of the hearing and have your notes ready. They will help you guide your client in making certain their concerns are expressed.
- Ensure your client's feelings on all parties' positions are known to the judge – not just how they feel about the Department's position.
- Sharing pictures, art, and stories can be as important to the youth as asking questions. They can also be indirect, but powerful indications to the court about your client's welfare.

Use the child engagement bench cards available in the CPS Judges Bench Book (linked [here](#)). Engage the child's caregiver – they know a lot about the child!

There are several reasons that children and youth must be in court to speak for themselves. One of the most powerful tools in healing children who have suffered abuse or neglect is to listen to them. For a complete discussion about youth involvement in court proceedings, please read the Children's Commission's report [Youth Presence in Court Proceedings](#), and check out the Bench Cards here.



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