Normalcy For Children And Youth In Foster Care
Roundtable Report
May 2019
Normalcy for Children and Youth in Foster Care Roundtable
Friday, January 18, 2019
10:00 a.m. - 2:00 p.m.
George I. Sánchez Building
University of Texas at Austin
Normalcy for children and youth in foster care

Engaging in normal, age-appropriate activities and experiences is a critical component of healthy child development. However, experiencing abuse or neglect and being removed from a family to foster care is not “normal.” Although foster care may be safer for a child or youth,¹ cultivating normal childhood experiences while in foster care is a challenge. Providing normalcy in foster care includes managing risk, giving children the opportunity to act like children, and encouraging the development of a child’s interests and strengths.

¹ For the purposes of this report, the term “child” refers to any individual age birth to eighteen, or in extended foster care, who is under the conservatorship of the Texas Department of Family and Protective Services. The term “youth” is also used to refer to individuals under DFPS conservatorship in their teenage years.
How is “normalcy” defined?

The federal Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) of 2014 required states to implement a “reasonable and prudent parenting standard” giving foster parents the authority to make day-to-day decisions affecting children in their care regarding extracurricular, enrichment, cultural, social, or sporting activities. Texas adopted a definition of “age-appropriate normalcy activity” as well as a definition of a “reasonable and prudent parent” effective September 1, 2015.

Texas Family Code Section 264.001(1) defines “age-appropriate normalcy activity” as an activity or experience that is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and in which a child who is not in the conservatorship of the state is generally allowed to participate including extracurricular activities, in-school and out-of-school social activities, cultural and enrichment activities, and employment opportunities.

Under Texas Family Code Section 264.001(5), “standard of care of a reasonable and prudent parent” means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;
- The child’s age, maturity, and development level;
- The best interest of the child based on the caregiver’s knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;
• The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
• The importance of encouraging the child’s social, emotional, and developmental growth; and
• The importance of providing the child with the most family-like living experience possible.

The Texas Department of Family and Protective Services (DFPS) adopted Minimum Standards for General Residential Operations (GROs) and Child Placing Agencies (CPAs) in the Texas Administrative Code (TAC) Title 26, Chapter 748 (updated July 2018) and Chapter 749 (updated October 2018), respectively.

Under 26 TAC Section 748.701, “normalcy” is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

“Normalcy” is defined under 26 TAC Section 749.2601 as the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard and having normal interaction and experiences within a foster family and participating in foster family activities.

Like Texas Family Code Section 264.001(5), 26 TAC Sections 748.705 and 749.2605 define the “reasonable and prudent parent standard” as the standard of care that a parent of reasonable judgment, skill, and caution would use to maintain the health, safety, and best interest of the child and to encourage the emotional and social growth and development of the child.

Similarly, under 26 TAC Sections 748.705 and 749.2605, when using the “reasonable and prudent parent standard,” a person must take into consideration the following when deciding whether a child may participate in childhood activities:

• The child’s age and level of maturity;
• The child’s cognitive, social, emotional, and physical development level;
• The child’s behavioral history and ability to safely participate in a proposed activity;
• The child’s overall abilities;
• Whether the activity is a normal childhood activity for a child of that age and level of maturity;
• The child’s desires;
• The surrounding circumstances, hazards, and risks of the activity;
• Outside supervision of the activity, if applicable and appropriate;
• The supervision instructions in the child’s service plan; and
• The importance of providing the child with the most normal family-like living experience possible.

Some examples of childhood activities include participating in or using the following:
- Sleepovers
- Prom
- Driver’s license
- Playscapes
- Cell phones
- Water activities
- ATVs
- Bicycles
- Email
- Social Media

There is a presumption that a reasonable and prudent parent would include the child in normal interactions and experiences within the foster family and allow the child to participate in foster family activities, to the same extent as a similarly situated child born into the family. Texas Family Code Section 264.114 provides immunity from liability for caregivers who exercise the standard of care of a reasonable and prudent parent in making decisions about a child’s participation in an activity.

**Why is normalcy important?**

Foster care should be a better experience for a child than the circumstances that led to placement in foster care. Foster care should, among other things, function as a service that provides opportunities to form positive bonds with peers and adults. Without normalcy, foster care can be a stigmatizing and isolating experience.

Normalcy has an immediate impact on day-to-day activities but also factors into strengthening mental health and resilience for children in foster care, preventing runaways from foster care, and building opportunities for safe and trusting relationships. Normalcy not only impacts the child’s well-being, but it can also facilitate a stronger bond with the caregiver. Normalcy may also impact child safety. For example, if a youth runs away it is more difficult to contact the youth or to give the youth a way to reach out for help if the youth does not possess a cell phone.

Normalcy must also be individualized. Not every child in foster care needs an alarm on their bedroom door to prevent running away. Not every child who experiences a mental health crisis needs to be admitted to a psychiatric hospital.
Being in foster care is a complicated emotional journey for children who experience it. Ensuring (or restoring) a sense of self-determination will empower children to vocalize their needs and feel safe and supported.

Finally, normalcy is just one of many considerations for children in care. It is important that normalcy is viewed through a holistic lens, in tandem with education, medical, mental health, and other considerations.

Broad statewide processes and policies can also help promote normalcy. For example, minimizing and controlling reasons for placement changes; promoting education, training, and practices across disciplines that are aimed at reducing time to permanency; ensuring all available familial and community supports are engaged; and promoting smooth transitions between homes and stages of a case. Most important to normalcy is giving children a voice in the decisions that impact their lives.

Foster parents also want the opportunity to experience normalcy, rather than fear possible liability for each decision made as a caregiver for a child. Although normalcy for caregivers is a laudable goal, and state law provides a measure of protection, federal law and state law do not require normalcy for the caregiver. Normalcy for the child will not always equal normalcy for the family, but it certainly may be a by-product.
How does youth voice relate to normalcy?

Children and youth in foster care have tremendous insights about their experiences while in care and how the foster care system can be improved. Youth also have suggestions to help adults involved in their lives ensure that they experience normalcy while in care. For example, youth want the opportunity to interact with caregivers and caseworkers without feeling reduced to the information in their case files.

The PSTSFA requires that youth ages 14 and older be involved in developing their case plan. Child Protective Services (CPS) also provides each child in the conservatorship of DFPS a copy of the CPS Rights of Children and Youth in Foster Care.2 The caseworker must provide a copy of the CPS Rights of Children and Youth in Foster Care to all children and youth in CPS foster care no later than 72 hours from the date they come into care and each time that a placement change is made.

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With each child or youth, the caseworker must review these rights, including the following rights to have a normal life:

- Speak and be spoken to in the child’s own language. This includes Braille if the child is blind or sign language if the child is deaf. If foster parents or caregivers do not know the child’s language, CPS will provide a plan to meet the child’s communication needs;
- Attend school and get an education that fits the child’s age and individual needs;
- Have religious needs met;
- Participate in childhood activities that are appropriate for the child’s age and maturity, including youth leadership development, foster family activities, and unsupervised childhood and extracurricular activities (including playing sports, playing in the band, going on field trips, spending time with friends, etc.);
- Privacy, including sending and receiving unopened mail, making and receiving private phone calls, and keeping a personal journal, unless an appropriate professional or court says that restrictions are necessary for the child’s best interest;
- Personal care, hygiene, and grooming products and training on how to use them;
- Comfortable clothing for the child’s age and size which is similar to clothing worn by other children in the community, as well as the right to clothing that protects against the weather. Teenagers should have the reasonable opportunity to select their clothing;
- Have personal items and gifts at the child’s home and to get additional things within reasonable limits, as planned for and discussed by the caregiver and caseworker and based on the caregiver’s ability;
- Personal space in the child’s bedroom to store clothes and belongings;
- Be informed of search policies (going through personal items). The right to be told if certain items are forbidden (or if not allowed to have them) and why. If belongings are removed, this must be documented;
- Healthy foods in healthy portions for the child’s age and activity level;
- Seek employment, get paid for work done at the child’s placement (except for routine chores or work assigned as fair and reasonable discipline), keep any money earned, and have their own bank account in the child’s name, depending on age or level of maturity;
• Give permission in writing before taking part in any publicity or fund-raising activity for the place where the child lives, including the use of the child’s photograph;
• Refuse to make public statements showing gratitude to a foster home, child-placing agency, or operation; and
• Not get pressured to get an abortion, give up a child for adoption, or to parent a child, if applicable.

Further, older youth have additional rights that are commensurate with the increased needs, responsibilities, and decisions they will encounter as a young adult. For example, the right to be their own medical consenter when authorized by the court, or the right to have assistance in obtaining a driver’s license or personal identification card.

Perhaps the most important thing that young people in care have to say about normalcy is that family and other caring relationships are at the heart of normalcy.³ Youth want authentic relationships and value relational permanency above all.⁴ Youth with foster care experience particularly emphasize the critical importance of remaining connected with their siblings.

**What is reasonable under the circumstances of the child?**

The hypothetical reasonable and prudent parent is an objective standard. Under Texas Family Code Section 264.114, a foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed CPA caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. Accordingly, the standard is intended to be used as a shield to insulate caregivers from liability when their parenting choices are reasonable under the circumstances.

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However, the idea of what is “normal” may vary between a biological family member, foster parent, Court Appointed Special Advocate (CASA), caseworker, attorney ad litem, or other individual, based on their background and experiences. Also, the reasonable and prudent parent standard is exercised against the backdrop of regulations. For example, if the law requires that a child attend a court hearing, but a reasonable and prudent parent decides it is not normal for a child to miss a day of school, the law supersedes the reasonable and prudent parent’s decision. Thus, normalcy is inherently subjective and requires consideration of the actual child’s circumstances and other factors.

Normalcy does not simply refer to participation in age-appropriate activities; it also refers to establishing bonds with peers and adults, not feeling stigmatized or singled out, or being treated differently because of a child’s foster care status. Biological and foster children who are living in the same home but who are treated differently from each other evokes strong emotions from children in foster care. For example, it is not normal for a biological child to call his or her parents “Mr. and Mrs.,” yet some youth in foster care report having to address the foster parent with these titles. While it is normal for a child to participate in school pictures and to participate in age and developmentally appropriate activities, it is not normal for a child to be visited by a caseworker or the child’s attorney at school. Moreover, children in foster care must be allowed to make certain decisions – and mistakes. Without these experiences, a child in foster care cannot learn how to deal with the consequences of a mistake when it happens.
Systemic barriers to providing normalcy and possible solutions

Roundtable participants acknowledged that the law on its face allows for children in foster care to experience normalcy. Yet, significant challenges remain to obtaining normalcy, depending on the child’s age, development, permanency status, and other factors.

The following barriers and solutions were identified and discussed by the Roundtable participants.

**Interaction with biological families**

Foster parents may not be trained, equipped, or comfortable interacting with biological families who may be dealing with substance use, family violence, or other issues. It is important to consider that if foster families are not comfortable interacting with the biological family, it can affect family reunification, transportation by the foster parent to facilitate family time or visitation, and information sharing between the child’s parents and the caregiver. A good first step is for foster parents and caregivers to engage with biological parents during visitation or family time. Both foster families and biological families may need training and guidance about the importance of interacting and how to do it in a safe and appropriate manner. Promoting biological and caregiver interaction in a non-adversarial manner also sets a model of healthy relationships for the child.
Kinship caregivers

Kin and fictive kin may be more empowered than foster parents to embrace normalcy for several reasons. First, the kinship caregiver may have a more positive relationship with the biological parents. This creates a more collaborative and a less adversarial environment. Also, kinship caregivers are not always licensed so they may not be subject to the same restrictions as a licensed foster parent, or may feel freer and more comfortable supporting normalcy activities for children to whom they are related. However, the lack of financial support and the process to become a verified foster home can limit the options for children residing in kinship homes as the process to become licensed can be overwhelming. Without the additional funds, kinship caregivers may not have the financial means to support some normalcy activities. One method that may improve upon this issue is the Caregiver Assistance Agreement, which pays a relative or other designated caregiver a monthly amount up to 12 months, if the family income is less than or equal to 300% of the federal poverty level, without having to become a licensed provider. This new program became effective September 1, 2017.

Transition to adulthood

Normalcy is important for all children in foster care, but for transition-age youth who are between age 14 to 18 and in foster care, the transition to adulthood is critical and normalcy has a big impact. Roundtable participants suggested that rather than focusing on a life skills class, transitioning youth need to have more life experiences and opportunities such as seeking employment and developing soft skills like interacting with co-workers or clients. Participants also addressed the need to start conversations about healthy relationships early. Youth at the Roundtable who were formerly in care were of the opinion that preparation for adult living or life skills should be taught through practice with caregiver guidance such as doing laundry or balancing a budget rather than in a classroom setting. Youth also reported that kinship caregivers may not identify as being associated with foster care, so it is important that youth in kinship homes also have access to Preparation for Adult Living services and opportunities through CPS.
Roundtable participants expressed concern over DFPS caseworkers and the child’s attorney interviewing children at school or CPS moving a child to a new placement without any time for an emotional transition or goodbye. Although time is often of the essence, training and guidance for caseworkers and caregivers could potentially prevent stressful school or placement changes. Also, Roundtable participants underscored that language matters and caregivers would like to be referred to as a “caregiver” rather than a “placement” or a “contractor.” If individuals caring for youth are addressed and treated with respect by everyone involved with the case, the caregiver role can feel less contractual and more familial.

Caregivers, caseworkers, investigators, attorneys, advocates, judges, and foster parents need guidance, training, and support to ensure a common understanding and consistent application of the concept and the rules regarding normalcy. Roundtable participants stated that training is inconsistent across Texas, possibly inadequate, and delivered in a manner that does not allow the best opportunities for retention and application. Elements that should be included in normalcy training include what the law and regulations require, cultural competency considerations, and practical considerations such as whether it is permissible to post photos on social media websites of their biological family which include images of the children in their care.

Caseworker understanding of the reasonable and prudent parent standard was cited by Roundtable participants as a significant barrier. Caregivers also need clear training and guidance on the financial repercussions and liability associated with normalcy decisions and licensing violations. Participants discussed whether licensing and investigations staff are trained on the same issues and in the same way, and whether the training which state inspectors receive is consistent with the training provided by CPAs. DFPS should also consider updating and reissuing its 2013 Public Service Announcement related to normalcy activities for children and youth in foster care.\(^5\)

\(^5\) DFPS Public Service Announcement 14-025, dated November 18, 2013.
Clarity around investigations

Guidance and clarity around who investigates issues that arise related to normalcy is needed. For example, caregivers expressed confusion about which entity is responsible for investigations when a child in foster care is injured while participating in a normalcy-related activity (e.g. riding a skateboard). There is a misunderstanding about CPS’ role regarding licensing requirements and/or licensing violations. One solution mentioned at the Roundtable is for DFPS to include in its training efforts messaging that clearly conveys the difference between when an investigation is conducted by Health and Human Services Commission (HHSC) Licensing division as opposed to the Child Protective Investigation division.
For children and youth in residential treatment, it is difficult to individualize decisions when there are broad restrictions on what activities are acceptable for children placed in a facility or home. Facility-wide or contract management restrictions may prohibit or hinder normalcy activities. Congregate care facilities in Texas must designate at least one person on-site who is responsible for making parental decisions.

A 2016 study from the Youth Policy Institute of Iowa found that the two main barriers to participating in normalcy activities for children living in congregate care were the inability to get permission (rules of the placement) and the length of time to obtain permission (approval process). The report produced a list of ways to provide normalcy in congregate care:

- Ask early and often about a youth’s interests and desired activities;
- Treat a young person as an individual, not a whole group – including choice of personal clothing, hair style, and bedroom décor;
- Provide frequent, experiential, real-life training to young people such as cooking, laundry, mowing lawns, and money management;
- Allow relationship building time and activities, including with family, friends, and community members;
- Eliminate agency “red tape” policy and practice obstructions;
- Train and motivate staff to be creative in supporting youth’s interests;
- Encourage and allow extracurricular activities, including at school, church and in the community;
- Involve youth in choosing and planning activities;
- Encourage the community to engage in the lives of the youth as skill trainers, transportation providers, or support families; and
- Allow youth to attend public school when possible – communicate often with educator regarding potential “normal” activities.

Attorney awareness

Attorneys representing children, parents, and the state may not fully understand the reasonable and prudent parent standard or how to advocate for a child to experience normalcy activities. Lawyers may also fail to recognize the rights and responsibilities of the foster parent to make certain decisions. If an attorney and a foster parent stand in opposition to one another, the foster parent may be reluctant to make normalcy decisions for fear of scrutiny and other negative repercussions.

Empowering caregivers

Caregivers often defer making decisions because they misunderstand their exposure to liability for making a decision related to normalcy. Clearer information is needed about who makes normalcy-related decisions, including the caregiver, the biological parent, the caseworker, and the attorney ad litem. For example, there are multiple obstacles to a child in foster care going on a vacation with a foster family and little consistency regarding what must be done to include a child in foster care. Another common example is a foster parent being unable to take the child for a haircut because the biological parent objects.
Multiple decision-makers for children and youth in foster care, including biological family, blur the lines around who can make the ultimate decision about an activity or event. Foster parents may perceive that even if their decision is reasonable, the child could still be moved, and their verification could be revoked or jeopardized. Florida-based Kids Central, Inc. suggested the following questions for caregivers to consider when deciding whether to allow an activity:

- Does this activity promote social development?
- How well do I know this child/teen?
- Has my child/teen shown maturity in decision-making that is appropriate for their age/ability?
- Would I allow my own child to participate in this activity?
- Who will be attending the activity?
- Does my child understand their medical needs and are they able to tell others how to help them if necessary?
- Will this activity violate a court order?
- Will the timing of this activity interfere with a sibling or parental visitation, counseling appointment or doctor’s appointment?

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• Does my child know who to call in case of an emergency?
• Does my child understand our parental expectations regarding curfew, approval for last minute changes to the plan and the consequences for not complying with the expectations?
• Can my youth self-protect (protect themselves)?
• If able and appropriate, have I consulted with my child’s birth parents about their thoughts/feelings about their child participating in this particular activity?
• Would the normal activity violate the safety plan?
• If there is a safety plan, have you referenced it?

Normalcy in the Service Plan

In addition to involving youth in the development of their case plan, participants noted that including additional specificity in the service plan or leaving flexibility to engage in normalcy activities will make it more clear which activities are approved. However, even though the child’s plan of service has a normalcy section where specific activities can be included, normalcy need not be limited to the activities spelled out in the service plan. For normalcy to become a reality, decision-makers must communicate and collaborate during the service plan process as well as in day-to-day interventions.

Experience in the foster home

There are numerous situations where children and youth do not feel included as part of the family. For example, some children in foster care are asked to eat separately or sleep in another part of the house, are not given opportunities to personalize their living space, or are not included in the biological family’s outings and vacations. This environment sends a message that the child or youth is different and less important than the other members of the household and can have a negative effect on normalcy and on the child in foster care. Relative caregivers and foster parents in particular must be trained on the impact of children being excluded from activities inside and outside the home and being restricted or separated physically from biological children in the family.
Whenever possible, foster families should avoid having a different set of rules for biological children and foster children including rules about phones, personal space, access to food, house keys, vacations, family outings, clothing rules, bedtimes, and routines.

**Judicial engagement**

Foster parents report that they often lack the opportunity to provide input to the court. As the child’s daily caregiver, foster parents often want the opportunity to communicate to the court about how the child is doing. The way a judge handles a case and treats the caregiver can set the tone for how issues are resolved as well as how others involved in the case are viewed and treated. If a judge ignores a foster parent or caregiver’s input about a child, it diminishes the importance of the caregiver’s role. Failure to engage foster families and caregivers results in frustration for the caregiver and does not allow for consideration of information that can help the judge decide what is in the child’s best interest.

Judges, attorneys, caseworkers, CASA volunteers, and the caregivers themselves should make concerted efforts to elicit information from the caregiver. For example, a speaker’s card or court report from the foster parent would make more information available to the judge. Alternatively, the attorney or guardian ad litem could inform the court of the caregiver’s presence in court and that the caregiver wishes to provide information. If judges pay attention to normalcy, then the individuals appearing in the court will follow suit. If there is an expectation that normalcy will be addressed in court, it is more likely that efforts will be made outside of court to support normalcy. Examples of questions that judges can ask related to normalcy include:

- Who knows this child and the child’s interests?
- What can we do to meet this need?
- What is the plan to provide for normalcy?

These efforts may also help the court fulfill its duty to review CPS’ efforts and to ensure regular, ongoing normalcy opportunities as required in Texas Family Code Sections 263.306 and 263.5031.
Lack of transportation

Challenges include transporting biological parents for visitation or family time, the burden on foster parents of transporting children to multiple activities, and providing transportation for relative caregivers. One possible solution is a foster care Lyft or Uber program so youth have transportation options with drivers who have passed certain safety standards. Another idea was to expand existing transportation services that support youth in foster care with disabilities in cities where there is sufficient public transportation. Carpooling may be another age-appropriate normalcy activity. Barriers to driving with friends and their families, such as background checks or supervision concerns, should be addressed and resolved. Other suggestions included partnerships with faith communities who have members willing and able to provide transportation as well as other potential community supports. Judges can also explore transportation alternatives with individuals involved in the child’s case, such as CASA. This can be especially important for kinship caregivers who may not have a CPA for support.
Many Roundtable participants expressed the opinion that the current provider rates do not account for normalcy activities, which can be a significant barrier to participation. Leveraging community resources is critical. Many local and statewide non-profits interested in supporting children in foster care may be a resource for normalcy funding. For example, church vans or busses could be used for transportation. Community members could also gather financial contributions to purchase gift cards to pay for gas. Child Welfare Boards\(^8\) and Rainbows Rooms\(^9\) are other local resources that could potentially fund normalcy activities. Since there is a statutory provision for local non-profit child welfare boards to support CPS, there may be additional county funds available through a county’s Commissioner’s Court. CarePortal is a faith-based initiative set up to fulfill requests submitted from caseworkers at governmental agencies or other child serving agencies approved by CarePortal.\(^10\) In Texas, CarePortal services 36 counties, primarily in urban areas. Another funding strategy is to set aside a portion of foster care maintenance payments to provide for normalcy activities, if possible.

Normalcy is a performance indicator in the Community Based Care (CBC) model. As the state moves toward CBC in various catchment areas, it will be important to monitor performance on achieving normalcy and measure progress over time. Further, some barriers to normalcy can possibly be addressed through data collection and analysis. For example, a publicly available report about licensing violations for reasonable and prudent parenting would help stakeholders understand how common investigations related to reasonable and prudent parenting deficiencies occur and last. Although HHSC Licensing can provide a report for deficiencies related to reasonable and prudent parenting, HHSC cannot produce information about what the deficiency is. Another suggestion was to explore whether Youth for Tomorrow (YFT) can provide a case review for normalcy activities for the cases it reviews.

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9 DFPS Rainbow Rooms. Available online at: https://www.dfps.state.tx.us/Child_Protection/Rainbow_Rooms/default.asp.
10 CarePortal. Available online at: https://careportal.org/.
Conclusion

Ultimately, normalcy goes hand in hand with a healthy child welfare system. Creating knowledge, allaying fears, and dispelling myths can empower caregivers and youth to bring the promise of normalcy to fruition. Encouraging openness and collaboration about normalcy between caregivers, parents, caseworkers, attorneys, and other interested persons will help create experiences and relationships that have been elusive for many youth in foster care. If foster care is viewed as a service and undertaken with a more holistic view of the child welfare system, then normalcy for children in foster care will be a natural by-product.
Roundtable Participants

Moderator: Judge Scott McCown (ret.)
University of Texas School of Law
Children’s Rights Clinic

Loeta Allen
Kinship Collaboration Group

Cindy Asmussen
Foster/Adopt Parent

Tymothy Belseth
University of Texas Institute for Child and Family Wellbeing

Kristene Blackstone
Dept. of Family and Protective Services

Judge Darlene Byrne
126th District Court

Michelle Cobern
CASA of Titus, Camp, and Morris Counties

Cathy Cockerham
Texas CASA

Sarah Crockett
Texas CASA

Debra Emerson
Dept. of Family and Protective Services

George Ford
Texas Council of Child Welfare Boards

Judge Katrina Griffith
Harris County CPS Impact Court

Hallie Graves
Foster Parent

Quyona Gregg
Dept. of Family and Protective Services

E.H.
Youth Representative

H. H.
Youth Representative

Brooke Hathaway
CASA of Travis County

Davina Hollin
Dept. of Family and Protective Services

Andy Homer
Texas CASA

Terri Jagger
Texas Foster Care Association

John Jarriel
DePelchin Children’s Center

Alana Jones
Dallas CASA

Tania Leskovar-Owens
Foster Angels of Central Texas

Staci Love
Dept. of Family and Protective Services

Gabriella McDonald
Texas Appleseed

Jessica McKay
The Settlement Home

Kate Murphy
Texans Care for Children
Katie Olse  
Texas Alliance of Child & Family Services

Dr. Cedric Payton  
Everyday Life Inc.

Judge Jamie Rawlinson  
Coastal Bend Children’s Court

Leela Rice  
Texas Council of Community Centers

Chelsey Rogers  
High Sky Children’s Ranch

Jean Shaw  
Health and Human Services Commission

Maggie Sheppard  
Foster Angels of Central Texas

Bryan Shufelt  
Office of Representative Stephanie Klick

Chyrstal Smith  
Foster Village

Kaysie Taccetta  
Dept. of Family and Protective Services

Judge Mandy White-Rogers  
Orange County Court at Law

Lorenza Wilson  
The Payton Foundation
Children’s Commission Staff

Tina Amberboy
Executive Director
tina.amberboy@txcourts.gov
512-463-9352

Monica Mahoney
Program Specialist
monica.mahoney@txcourts.gov
512-463-5384

Jessica Arguijo
Communications Manager
jessica.arguijo@txcourts.gov
512-463-7226

Dylan Moench
Staff Attorney
dylan.moench@txcourts.gov
512-463-3182

Jamie Bernstein
Assistant Director
jamie.bernstein@txcourts.gov
512-463-5393

Patrick Passmore
Grant Administrator and Accountant
patrick.passmore@txcourts.gov
512-463-4924

Tiffany Edwards
Executive Assistant
tiffany.edwards@txcourts.gov
512-463-538

Milbrey Raney
Training Director
milbrey.raney@txcourts.gov
512-463-7714

Jocelyn Fowler
Staff Attorney
jocelyn.fowler@txcourts.gov
512-463-1421

Andrea Vicencio
Executive Assistant
andrea.vicencio@txcourts.gov
512-463-6878