



Child Law Practice

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Helping Lawyers Help Kids

SPECIAL FOCUS

Youth in Court

Engaging Youth in Court: Sample Court Policy

by the ABA Bar-Youth Empowerment Project and the National Child Welfare Resource Center on Legal and Judicial Issues

Background

In 2006, Congress recognized the importance of youth input in court proceedings by enacting the Child and Family Services Improvement Act. This Act requires, among other things, “procedural safeguards to be put in place to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.”

Likewise, the Fostering Connections Act of 2008 requires, as part of the case review process, a youth-directed transition plan to be created within 90 days of a youth exiting foster care.

Research supports the goals of this legislation and the proposition that youth should be more effectively involved in permanency planning and in their court hearings, in particular.¹

For youth to play an active role in court, child welfare agencies and courts must meaningfully engage them. To fulfill this obligation, many jurisdictions are drafting policies and protocols to involve and empower youth in court, particularly in

their permanency hearings and transition planning. The following sample court policy suggests key steps to successfully engage youth in court.

1) Youth should be present at their dependency court hearings.

When placed in foster care, youths’ lives are turned upside down and decisions are often made without their input. They lose control over many facets of their lives. Youth feel empowered and more in control when they are allowed to provide input to the decision makers about issues that affect them. Judges make critical decisions about placement, education, permanency, visitation with family, and well-being needs. Involving youth in the decisions about these topics empowers them.

When judges observe and interact with youth in court hearings they are powerfully reminded how the young person’s life is being drastically disrupted. When youth are involved in court, judges learn new information from the youth they may not have gotten from service providers and understand how the youth feels about a variety of issues.

2) In limited cases, it is acceptable for a youth to not attend her dependency court hearings.

a. Youth does not want to attend after being informed about the hearing and its importance.

Generally, youth should not be forced to attend their court hearings. However, a judge should not exclude a youth because she does not want to attend without assurance from the youth that she has been fully informed about the hearing and its importance. Further, the judge should know the reasons why the youth does not wish to attend and should make a finding accordingly. A brief written statement from the youth saying why she does not want to be present in court is a simple request the judge can make

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ABA Child Law PRACTICE

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to document the reasons.

If the youth does not want to see her parents or hear what may be said in the court hearing, the judge can speak with the youth without her parents present to give her an opportunity to share information and ask questions. (For more information about ex parte communications with children, "Ex Parte Communications between Children and Judges in Dependency Proceedings," see *ABA Child Law Practice* 29(7), September 2010, 97, 103-06, available at www.abanet.org/child/empowerment.)

If the youth's schedule prevents her from attending, the judge should consider rescheduling the hearing so the youth can attend. To prevent scheduling conflicts, youth should be included in the scheduling process, and school or extracurricular calendars should be considered. See Item 7 for more information.

b. Judge determines it's contrary to the child's interests.

If a party objects to a youth being present for all or part of the hearing, the judge should hear evidence to determine whether there is good cause to exclude a youth who desires to be present at her hearing. This good cause standard should be high and, where practical, require a mental health professional's opinion that attending court would harm the child. Again, if the judge determines a youth should not attend court, the judge should document in the court order whether the child was present and if not, why. Requiring such a finding in the court order signals to all parties the importance of having the child present during the hearing and that there must be a reason to exclude the child.

c. Lack of transportation should not be a reason to exclude the youth.

Some jurisdictions require the child

welfare agency to transport the child to court. Other jurisdictions, while sometimes obligating the child welfare agency to ensure the child's presence in court, allow others to actually provide the transportation. Judges should encourage the foster parents to attend hearings and transport the youth. If the foster parents are not going to attend, the social worker, relative, or other trusted adult should bring the youth. If the youth is old and mature enough, the youth can drive or take public transportation to the hearing. If the youth is not present and the only explanation is that the parties were unable to transport the youth, the judge should postpone the hearing until the youth can be present.

3) If the judge finds it is contrary to the youth's interest to participate in person, she should consider alternatives before excluding the youth from the hearing.

a. Temporarily exclude the parent/guardian

If the child is afraid of the parent, does not want to see the parent, or it is otherwise unsafe for the child to be in the same room as the parent, the judge may temporarily exclude the parent while the child is present. The parent's attorney may still be present. This allows the child to be involved and the court to gain necessary information from the child, but does not force the child to be in the same room with the parent.

b. Have the youth attend a portion of the hearing

The judge can speak to the youth about issues relating to permanency, placement, school, siblings, and other issues that are important to her. When the judge is going to discuss issues that will be harmful for the child to hear, the child can be

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Technical Assistance on Youth Court Involvement

Are you interested in developing a youth court policy in your jurisdiction? The ABA Bar-Youth Empowerment Project can help. For information on training and technical assistance:

- Contact Andrea Khoury, ABA Bar-Youth Project Director, 202/662-1730; Andrea.Khoury@americanbar.org
- Visit www.abanet.org/child/empowerment/home.html

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excused. This involves the child but protects her from hearing harmful information.

c. Talk to the judge in chambers

If the child wants to speak to the judge without being in the courtroom, or the courtroom is unsuitable for another reason, the judge may, adhering to the jurisdiction's laws, court and ethics rules, speak to the child in chambers. The more informal setting may be more comfortable for the child.

d. Use video technology

Video technology is easily accessible and has minimal cost. Many courtrooms are (or can easily be) equipped with Internet access and video capabilities. Using such technology, the youth can participate in the hearing from home or school. This allows the youth to be involved, while remaining in a familiar setting without disrupting her schedule.

e. Letter and hearsay statements

The youth, with her representative, can write a letter to the judge giving her input into decisions that the judge will make. Some jurisdictions use forms with specific questions and requests for information or updates helpful in eliciting responses from youth. Youth must understand that this information will be provided to all parties.

4) During the dependency hearing, the judge should document whether the youth is present and if not, why. The judge should also specify whether the youth should be brought to the next hearing.

In each hearing, the judge should inquire whether the youth is present and, if not, find out why the youth is not present. This signals to the parties that the judge values the youth's presence and recognizes the importance of having the youth's input and empowering the youth by allowing her to be involved in the decision making process. This, combined with instructions by the judge, will help ensure the youth's presence.

5) During the dependency hearing, the judge should engage the youth and explain the proceeding and ruling in age-appropriate language.

The youth's appearance in court should be meaningful to the youth and the judge. A primary purpose for involving the youth in the hearing is to empower and give back some sense of control to the youth. Additionally, the judge can also learn things from talking to the youth about her case. And the judge can gain insight from observing the youth interact with caregivers and parents.

Meaningful engagement cannot happen unless the judge knows how to make the youth comfortable and ask appropriate questions. Because of the complexity of the court

process and the unfamiliar legal language, the judge should take the opportunity to explain the proceeding and his ruling to the youth and ensure the youth does not have any questions.

6) A child-friendly hearing notice should be provided to the youth.

Most courts have a standard procedure for notifying the parties of each dependency hearing. Some place the burden on the court to provide such notice and others place the burden on the child welfare agency. In either case, seldom does the child get personal, written notice of the hearing. Youth inconsistently receive informal oral notice from the social worker, attorney, CASA or foster parent. There should be a consistent and mandatory way that youth receive notice of the hearings in language they can understand. These notices should go directly to youth in their placements.

7) Hearings should occur without requiring an extended wait by the youth.

Hearings should be set for a specific time, if possible, to minimize the time youth and other participants must wait. Sitting in a courthouse for several hours can dissuade a youth from attending future court hearings. Additionally, time-certain hearings cut down on the number of people in the waiting area, minimizing the chance of a child seeing a parent/caregiver she should not. If time-certain hearings are not possible, hearings should be set for block times (e.g., 3 hearings set for 9 a.m., 3 hearings set for 10 a.m., etc.).

Setting time-certain hearings also minimizes the time the youth is out of school. Other ways the court can limit school absence, while promoting court participation, include:

- Hearing times should account for the youth's school schedule. The

judge should consult the local public school calendar when scheduling a hearing. There are school holidays, teacher work days, and other days when school is not in session when hearings can be scheduled.

- Set hearings for after school hours for school aged children.
- Make every effort to call cases involving youth who are present first so the youth can leave and get back to school.

8) The judge should allow the youth to bring a support person with her to the hearing.

Youth are understandably nervous and anxious about appearing in court and speaking to a judge. Having a familiar, trusted person with the youth can relieve anxiety and allow the youth to speak more openly and have a more meaningful experience. This person can be a relative, the CASA, mentor, teacher, or other trusted adult. Whether or not that person can actually be present for the hearing will depend on the jurisdiction, but youth feel comforted even knowing that the individual is in the building.

9) The youth should be properly prepared before the hearing and debriefed after the hearing.

The way to ensure the most meaningful and least stressful court experience for a youth is to properly prepare her for the hearing. The child's representative should role play the hearing so the youth knows what to expect and help the youth decide what to say to the judge. Among other things, the child's representative should inform the youth:

- who will be present and what their roles are;
- what questions the judge is likely to ask;
- what topics are likely to be discussed;

- what information the judge gets from the various court reports;
- whether she will be able to speak with the judge in chambers; and
- what she should wear and how she should act

The social worker and the foster parent should also prepare the youth and ensure she has transportation.

Following the hearing, the youth may be confused or have questions. The child's representative should spend time with the child ensuring she understands what was ordered, what will happen next, and when the next court hearing will be. The child's representative should allow the youth to ask any questions right after the hearing and provide her contact information if the youth has questions later. The foster parent should know what happened and how to contact the child's representative if the child has questions.

10) The judge should ensure the child has adequate representation.

State law varies on the type of representation youth receive. Many states require that an attorney speak for the child. Regardless of the type of representation, federal law requires that judges "consult" with the child in some manner, which ensures youth

have a right to have their opinion heard by the judge. If the judge doesn't think this is occurring, the judge should issue an order appointing a lawyer. Also, youth may have specific issues that require the judge to appoint legal representation such as:

- The case involves an older youth;
- The youth's opinion differs from her representative's; or
- The case involves complex situations like:
 - special education,
 - residential placement, or
 - cross-over youth (children involved in dependency and delinquency systems).

The *ABA Bar-Youth Empowerment Project* and the *National Child Welfare Resource Center on Legal and Judicial Issues* are projects at the ABA Center on Children and the Law, Washington, DC.

Endnotes

¹ Weisz, Victoria, Twila Wingrove, and April Faith-Slaker. "Children and Procedural Justice." *Court Review* 44, 2007, 36; Quas, Jodi, Allison Wallin, Briana Horwitz, Elizabeth Davis, and Thomas Lyon. "Maltreated Children's Understanding of and Emotional Reactions to Dependency Court Involvement." *Behavioral Sciences and the Law*, 27, 2009, 97-117.

Why Youth Want to Be in Court

Some reasons youth want to be in court:

- Helps youth feel their opinions matter.
- Lets youth know what is going to happen to them.
- Gives youth a chance to speak up if something they did not approve of is going to happen.
- Lets youth gain knowledge of the court system.
- Provides face-to-face contact (making it personable). The youth does not become a statistic or a case. The foster youth becomes a person.
- Judge can view child interactions with other case stakeholders.
- Judge can hear directly from youth.
- Youth hears directly from judge.
- Involves youth in the decision-making process.
- Promotes positive youth development, youth seen as productive.
- Treats youth like adult clients in court proceedings that affect them.