



Courts Consulting with Children: Insuring Meaningful Participation of Children in Juvenile Court Permanency Hearings

Juvenile Court Improvement Program (JCIP)

BACKGROUND

In December 2008, the Oregon Judicial Department's Juvenile Court Improvement Program (JCIP) facilitated a full-day meeting to identify considerations and priorities related to the development of best practices for courts as they implement the federal mandate to consult with children in permanency hearings. Thirty people participated in the meeting including: two teens in foster care, 5 judges, Citizen Review Board members and staff, child welfare staff, attorneys, and CASA representatives.

The morning was designed to ensure that all participants understood the law and had the opportunity to voice concerns and ask questions related to implementation. Andrea Khoury, from the ABA Center on Children and the Law, provided information on the federal law and how it is being implemented in states around the country. The Honorable Paula Brownhill, Clatsop County Circuit Court Judge, provided attendees with an overview of how she has consulted with children in her court. Finally, four child-development experts provided attendees with information on how to best serve our children and families in accordance to the federal mandate based on their expertise and background:

- Dr. Meg Eastman
- Lynne Herbert
- Melissa Smith Hounstein
- Lauren Sproul

The afternoon was used to identify priorities and considerations for statewide protocols and to develop key concepts. This document is a compilation of the work of meeting attendees and

materials gained from other states as well as the ABA Center on Children and the Law. JCIP hopes the materials provided in this technical assistance bulletin will assist judges with: implementing this law, maintaining the integrity of the court process, and protecting children from the risks inherent in their involvement in the process.

CHILD AND FAMILY SERVICES

IMPROVEMENT ACT

This law requires states to have procedural safeguards in place to ensure that in permanency hearings the court conducting the hearing consults with children, in an age-appropriate manner, regarding the permanency and transition plans proposed for them. The pertinent federal law can be found at 42 U.S.C.A. § 675(5)(c) and is referenced below:

§ 675. Definitions

(5) The term "case review system" means a procedure for assuring that—

(C) with respect to each such child

(iii) procedural safeguards shall be applied 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;

RECOMMENDED PRACTICES

1. The court and DHS/CAF should expect that children six years of age and older will attend their permanency hearings, while respecting their right not to attend. Whenever appropriate, the child's participation should be encouraged.
2. Children six years of age and older should appear at their permanency hearings, unless:
 - the child declines to do so after being fully informed by his/her attorney or CASA; or
 - the Court determines that there is a compelling reason to exclude the child.
 - a. Significant weight should be given to the child's attorney's position in the Court's determination as to whether there is a compelling reason to exclude the subject-child.
 - b. All parties should have the opportunity to be heard before the Court reaches its conclusion regarding exclusion.
 - ii. Where the subject-child is below the age of 10, the child's age may be one factor considered by the court when determining whether there is compelling reason to exclude the child.
 - iii. Whenever possible, full exclusion should be avoided in favor of
 - a. bifurcating the hearing to allow the child to attend a portion dedicated to receiving the child's input;
 - b. allowing the child to be heard *in camera* in the presence of only the judge, the child's attorney and a court reporter; or
 - c. allowing the child to submit a letter to the court.
3. In any case in which the subject-child is not present, the Court should inquire why the child is not present in court, including confirming that the child's absence is not due to a failure to provide the child with timely notice or transportation.
4. It is the duty of the DHS/CAF and its contract agencies to provide subject-children with appropriate transportation to their Juvenile Court proceedings.
5. It is the well-established professional responsibility of the child's attorney to prepare children for court appearances, including helping them understand what to expect in court, helping them prepare to speak to the judge, and advising them that painful, sensitive issues may be discussed. It is also recognized that the child's attorney is the most appropriate professional to debrief their clients after each appearance.
6. Child-friendly, jargon-free language should be used at Juvenile Court proceedings attended by subject-children
7. Sufficient time should be allocated for subject-children to be heard.
8. JCIP should seek to establish a protocol with the Department of Education mandating that children not be penalized for missing school to attend their court proceedings. In addition, the Court should provide any child attending a hearing with a letter from the court explaining that the child's presence was required.
9. Recognizing the physical limitations of most Oregon Courthouses, each courthouse should have a Children's Space: a safe and comfortable space for teens to wait for their cases to be called. The Children's Space should have computers and other resources, including materials to help them understand the proceedings in which they are involved. The Children's Space should also function as safe havens where children don't have to worry about unwanted encounters with family members or other individuals.
10. The JCIP should collaborate to ensure participation of children currently or formerly in foster care on the JCIP Advisory Committee, who can assist the JCIP with developing and implementing child-friendly programs and practices.
11. Although these recommendations are specific to Permanency Hearings, (including hearings regarding the transition from foster care to independent living), this limitation is not intended to discourage any judge or referee from applying them in any proceeding where the court deems it appropriate to do so.