

Right of Foster Youth to Attend Court Hearing Legal Memorandum

The Texas Family Code provides that children shall attend permanency and placement review hearings.

For **placement review hearings** the law states that:

[t]he child shall attend each placement review hearing unless the court specifically excuses the child's attendance. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older.

TEX. FAM. CODE ANN. § 263.501 (f) (Vernon 2008).

For **permanency hearings** the law provides that:

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. 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 if the court determines it is in the best interest of the child.

TEX. FAM. CODE ANN. § 263.302 (Vernon 2008).

In 2007, the Texas Legislature *removed language* in these statutes that stated:

[T]he court may dispense with the requirement that the child attend a placement review hearing. As one commentator notes: The child is after all, the focus of these permanency plans and hearings. Although the court controls the extent of the child's participation, his or her presence puts a human face on what might otherwise appear bureaucratic or perfunctory. While the child's absence won't invalidate the results of the hearing, the sense of the statute is that ordinarily the child should attend.

TEX. FAM. CODE ANN. § 263.302 (2007)

Family Code provisions related to medical care of foster children support youth attending their hearings. A provision titled: **Judicial Review of Medical Care** requires that “[a]t each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court the child's views on the medical care being provided to the child.” TEX. FAM. CODE ANN. § 266.007 (c) (Vernon 2008).

Furthermore, a court may authorize foster youth who are 16 years old to consent to the provision of medical care if the court determines that the child has the capacity to consent to medical care. TEX. FAM. CODE ANN. § 266.010 (a) (Vernon 2008). “The court can make the determination of capacity during the course of a hearing under Chapter or may hold a hearing to make the determination on its own motion.” TEX. FAM. CODE ANN. § 266.010 (b) (Vernon 2008).

In addition, a foster child who is at least 16 years of age, or the foster child's attorney ad litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.503.

TEX. FAM. CODE ANN. § 266.010 (b) (Vernon 2008).

The law also mandates that CPS educate foster youth about their right to request to be authorized to make their own health care decisions before they turn 16. TEX. FAM. CODE ANN. § 266.010 (1) (Vernon 2008). Clearly, these statutes contemplate older foster youth attending court hearings and judges developing familiarity with their capacity to make health care decisions as they prepare to age out of the foster care system.

CPS is responsible for preparing older foster youth to transition from foster care to independent living. Numerous sections of the Family Code discuss this responsibility. The Preparation for Adult Living Program was established to “address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living” TEX. FAM. CODE ANN. §264.121 (Vernon 2008).

For **every placement review hearing**, CPS is charged with preparing a placement review plan for youth 16 and older, that

contain[s] a discharge plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are available through the Preparation for Adult Living Program operated by the department.

TEX. FAM. CODE ANN. § 263.502 (c)(3) (Vernon 2008). And “[a]t each placement review hearing, the court shall determine whether: the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community.” TEX. FAM. CODE ANN. § 263.503 (3) (Vernon 2008). A similar provision is found in **Permanency Hearings**. TEX. FAM. CODE ANN. § 263.306 (10) (Vernon 2008).

It is illogical to think that a youth who will be transitioning out of care in just two years or less would not be permitted to attend the court hearings where these important determinations are being made by those responsible for assisting the youth in the transition. Non-foster youth of this age making decisions about college and careers are at the center of the decision process, and are not barred from the room as their parents and other adults make all the decisions in their absence.

Numerous provisions in the **Texas Administrative Code** and **CPS Handbook** relate to preparing youth to transition out. All too frequently, youth do not receive adequate services before they age out, often due to CPS caseworker turnover and large caseloads. Common problems include: a lack of necessary identification documents, their immigration status has not been addressed, they don't have realistic plans for housing and education, they have not received assistance in obtaining SSI benefits, they have not had required/appropriate training, they are not prepared to live on their own, and important planning meetings have not been held.

Judges need to take an active role in reviewing transition plans and ensuring that CPS is taking care of what they are required to do and, if necessary, resetting hearings so CPS can take care of the outstanding issues. The presence of the youth at court hearings is an opportunity for the court to receive input from the youth about planning for the transition process and to alert the court to the problems before the youth ages out and the court no longer has the power to remedy CPS oversights.

Under Texas law children and youth in foster care have rights. TEX. FAM. CODE ANN. § 263.007. Included in those rights is *participation in a court hearing that involves the child*. TEX. FAM. CODE ANN. §263.007(b)(13) The Texas Department of Family and Protective Services has also established rights for foster children, which includes *the right to go to the child's court hearing and speak to the judge*. www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/rights.asp (last visited November 26, 2012). Beyond the strong Texas statutory and policy authority for foster youth participation in court proceeding, human rights law recognizes the importance of children participating in court proceedings concerning them. See, for example, the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; 28 I.L.M. 1456 (1989), entered into force Sept. 2, 1990 (hereinafter "CRC"). www2.ohchr.org/english/law/crc.htm. The CRC provides that all interested parties, including the child, "shall be given an opportunity to participate in the proceedings and make their views known." CRC Art. 9(2). The child shall be given the right to express their views freely to all matters affecting them, with "the views of the child being given due weight in accordance with the age and maturity of the child." CRC Art. 12(1). Furthermore, "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." CRC Art. 12(2). "The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions." *Roper v. Simmons*, 125 S. Ct., 1183, 1200 (2005).

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