
***DEPENDENT YOUTH AGING OUT OF FOSTER CARE:
A GUIDE FOR JUDGES***

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INTRODUCTION

Youth experience important life changes between the ages of 15 and 21. Adolescence and the transition to adulthood are traumatic and full of ups and downs for youth and their caretakers, even in the best of situations. During these years, youth try to figure out who they are, where they belong, and what they need to do to satisfy the expectations of the adult world.

In addition to the growing pains that all adolescents experience, young people in out-of-home care face unique challenges as they assume increasing levels of independence and responsibility. Research has firmly established that foster children have a more difficult time than their non-foster care peers in becoming resilient and competent adults. Many young people who are raised in families remain in their parents' homes and draw on parental support -- both financial and non-financial -- well after reaching the age of majority. By contrast, youth in care do not have this option and often are cut off from their sole support system at age 18.

The juvenile court has the opportunity -- and a special obligation -- to ensure that youth entrusted to the state's care have the support they need to age out of care as self-sufficient, healthy, and productive adults. This publication is designed to aid the court in planning for these youth.

OVERVIEW OF THE FEDERAL FOSTER CARE INDEPENDENCE ACT

Since 1985 federal law has recognized that older youth in foster care deserve special attention and programming. In that year, the Independent Living program was added to the Social Security Act. In 1999, the law was further amended by the Chafee Foster Care Independence Act (FCIA), 42 U.S.C. § 677, to respond to the limitations and perceived ineffectiveness of the Independent Living program. Of the approximately 20,000 youth who age out of foster care each year, many are not prepared to live independently: many youth are discharged from care without attaining basic education goals, many become unemployed, homeless, and dependent on public assistance.¹

FCIA requires states to:

- Serve youth up until age 21 who were in foster care during a time period defined by the state. (Some states have chosen age 16.)
- Serve all youth regardless of permanency plan or placement setting.
- Serve all youth at all stages of acquiring independent living skills, including youth with special needs or disabilities.
- Develop outcome measures for programs that use FCIA dollars.

Under FCIA, states are permitted to:

- Use up to 30% of their FCIA money to provide room and board for youth who have aged out of the system and are over age 18 but under 21.²
- Extend Medicaid coverage until age 21 for youth who have left foster care.

¹ See U.S. Department of Health and Human Services, TITLE IV-E INDEPENDENT LIVING PROGRAMS: A DECADE IN REVIEW (U.S. Government Printing Office, 1999); U.S. Department of Health and Human Services, FOSTER CARE: EFFECTIVENESS OF INDEPENDENT LIVING SERVICES UNKNOWN (GAO/HEHS-00-13) (U.S. General Accounting Office, November 1999); R. Cook, A NATIONAL EVALUATION OF TITLE IV-FOSTER CARE INDEPENDENT LIVING PROGRAMS FOR YOUTH: PHASE 2 (Westat, Inc., Contract No. OHDS 105-87-1608, U.S. Department of Health and Human Services, 1991).

² While there are some restrictions on how FCIA dollars can be used to provide room and board for youth *currently committed* to children and youth agencies, it should be made clear that placement maintenance Title IV-E dollars are and should be used to provide room and board for committed youth. These dollars can be used to develop specialized placements for older youth that provide a place for IL skills to be practiced as well as for support and stability to be provided the youth.

QUESTIONS JUDGES SHOULD ASK AT PERMANENCY REVIEW HEARINGS: ASFA AND OLDER YOUTH

What is the youth's permanency plan?

FCIA does not change the preference established in the Adoption and Safe Families Act (ASFA) that youth be raised in as family-like a setting as possible, such as with their biological families, or with adoptive parents or relatives. The same hierarchy for permanency planning exists for teens as younger children: reunification, adoption, legal guardianship, and placement with a relative. When the court finds that a compelling reason exists for determining that it would not be in the youth's best interests to follow one of the four preferred permanency plans, the fifth option is "another planned permanent living arrangement" (APPLA).³ This term is not defined in the regulations.

ASFA eliminated long-term foster care as a permanency goal for youth. Many older foster youth are placed in group homes or institutional settings. Placement in a group home or institutional setting is not likely to be an appropriate APPLA.⁴ APPLA cannot be used as simply another term for long-term foster care.

Independence – as contrasted to Independent Living services – can be a permanency goal if the placement and services delineated in the permanency plan provide the youth with supportive and family-like relationships and the skills and competencies s/he will need to eventually live on his/her own. However, judges should ask youth if there are relatives or non-relatives who might be adoptive or placement resources. Whether youth are in the most family-like setting should be inquired at *each* court review even if the permanency plan is independence. The permanency plan of independence will not satisfy federal law without a meaningful and concrete explanation of how stability and long-term connection with adults will be achieved.

What are the contents of the youth's Independent Living Plan?

Federal law requires that each youth age 16 and older have, as part of their family service plan (FSP), an Independent Living (IL) plan that delineates the services they are receiving to help them become self-sufficient, productive adults. The court should ensure that every youth in care, at age 16, is provided with "a written description of the programs and services which will help such a child prepare for the transition from foster care to independent living." 42 U.S.C. § 675 (1)(D). The plan should be designed to help the youth develop competencies and connect him/her to services in the following areas:

- Education (including counseling and support)
- Vocational and Career Counseling and Placement
- Physical and Mental Health Care (including family-planning and sexual health)
- Housing
- Relationships with Caring Adults
- Knowledge of Community Resources and Public Benefits/Services
- Expertise in Daily Living Skills (including budgeting and home management, communication and self-advocacy skills, problem solving, and planning for the future)

³ See 42 U.S.C.A. § 675 (5)(C).

⁴ For a comprehensive discussion of APPLA please see Cecelia Fiermonte & Jennifer Renne, MAKING IT PERMANENT: REASONABLE EFFORTS TO FINALIZE PERMANENCY PLANS FOR FOSTER CHILDREN, American Bar Association Center on Children and the Law (Washington, D.C., 2002). While a youth's special mental health or behavioral needs may require placement in a group or residential facility for a period of time, in most cases adequate treatment should result in the youth's ability to live in less restrictive and more family-like setting. *Id.* at p. 83. If a youth lingers in these placements for too long, it is likely that ASFA will not be satisfied.

Have reasonable efforts – specifically the provision of all appropriate independent living services – been made to achieve the permanency goal of independence?

ASFA requires that courts make findings at each permanency review hearing as to whether the child welfare agency has made reasonable efforts to achieve whatever permanency plan is chosen for the youth. 42 U.S.C. §671 (a)(15)(C). This finding must be made for the state to receive Title IV-E reimbursement. If the court does not believe that the youth is being provided with sufficient services to actually allow him or her to meet the goal of independence, no finding of reasonable efforts should be made. The court should scrutinize the efforts being made to help a youth achieve independence in the same manner and with the same rigor that it reviews efforts made to reunify youth with their families or find adoptive homes.⁵

If a youth is being discharged from foster care, what is the discharge plan?

The age up to which a youth can stay in foster care differs in each state. Some states discharge youth at age 18, while others allow youth to stay in care until age 21 under certain conditions. Judges should be aware of the particularities of discharge in their state and make sure that youth before the court are aware of their options. Please see National Resource Center for Youth Development's website – www.nrcys.ou.edu/State_Pages/state_al.htm – and Christine Eilsertson, INDEPENDENT LIVING FOR FOSTER YOUTH, National Conference of State Legislatures (Washington, D.C., 2002) for more information about the laws and policies of each state with respect to youth aging out. Often, allowing youths to stay in care past age 18 improves self-sufficiency outcomes by allowing them to complete educational and vocational programs and address mental health issues.

All state dependency systems seek to serve the best interests of the youths committed to their care. All decisions approved by the court are guided by this standard. Before a court discharges a youth's commitment, the court must be satisfied that the discharge serves the youth's best interest and fosters well-being. This obligation is the same for teens and young adults. The court should require the county agency to present a discharge plan that covers all of the core areas of the IL Plan. The court should reject discharge plans which do nothing more than refer youth to homeless shelters or county public assistance offices, since these "plans" on their face do not fulfill the permanency goal of independence and self-sufficiency.

The court also should consider deferring its decision to close the case when the judge is unsure of the youth's ability to live independently. For example, the court can discharge the commitment of physical or legal custody to the children and youth agency, but maintain supervision by the children and youth agency and list the case for a status review in 90 days. This time period will serve as a trial discharge to determine if the permanency goal of independence has truly been achieved.

Finally, prior to discharge, the court should ensure that the youth knows about:

- his/her entitlement to IL services even after discharge and continuing until the youth reaches 21
- if applicable, eligibility criteria for the state's or county's room and board policy
- if available in your state, Medicaid or other health insurance that is available to foster youth aging out
- if available in your state, any tuition waivers or scholarships available to youth who have been in foster care

If a youth is requesting discharge, what are the reasons?

If the youth is requesting discharge or agreeing to a discharge, the juvenile court should conduct a colloquy to inquire as to the reasons for the request and whether alternatives to discharge have been explored. Youth may ask for discharge for reasons that have nothing to do with their readiness to live on their own. The court should inquire of youth what they will need to succeed and give the youth's counsel wide latitude in making a record of his or her client's needs, of the youth's experience in care, and of the youth's reason for agreeing to discharge. Again, as discussed above,

⁵ See Karen Aileen Howze, HEALTH CARE FOR TEENS IN CARE, American Bar Association Center for Children and The Law (Washington, D.C., 2002) (discussing this theory in depth).

deferring discharge and listing the case for review after a reasonable period of time may be the best course of action.

QUESTIONS JUDGES SHOULD ASK AT PERMANENCY HEARINGS: HEALTH CARE NEEDS

Are the youth's health care needs addressed adequately in the case plan?

Youth in foster care are a medically vulnerable group.⁶ The court must insure that each youth's service plan identify any physical or behavioral health needs as well as the treatment services that will be sought to address these needs. Because most youth in foster care are eligible for Medicaid, they are also eligible to receive the benefits of the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). See 42 U.S.C. § 1396d(r). The protections of EPSDT insure that foster youth receive all medically necessary treatment, which can include mental health treatment, drug treatment, and treatment regarding reproductive health.

If the youth is about to be discharged from foster care, what plans for health insurance have been made?

It is often very difficult for young adults to secure health insurance once they have been discharged from foster care and turn age 19. Many of these youth are working low wage jobs. These jobs rarely provide health insurance, but usually pay too much for the young adult to meet the very low income guidelines for Medicaid. Prior to discharging a youth, a judge should inquire into the youth's medical status and needs and how the discharge plan provides for this care, including insurance. Judges should be aware of insurance programs in their states that cover the 19-21 year-old age group. Because foster care youth often fall through the cracks in insurance coverage, judges should advocate that their states extend Medicaid coverage to youth aging out.

QUESTIONS JUDGES SHOULD ASK AT PERMANENCY HEARINGS: EDUCATION AND VOCATIONAL TRAINING NEEDS

What is the youth's current educational program and status of achievement?

A delineation of services to assist a youth to attain his/her educational and/or vocational goals is a critical component of every teenager's IL plan. Youth who do not finish high school or receive vocational training are less likely to secure the types of jobs that allow them to make a living wage. Such planning is critical for foster care youth. Studies have shown that youth in foster care often are achieving at lower levels than their non-foster peers due to multiple placements, barriers to enrollment, and the stressors and trauma resulting from abuse and neglect histories.⁷ The court should inquire as to where the youth is in school, the grades s/he is receiving, and the attendance record. The court should require the child welfare agency to expeditiously deal with any barriers to the youth's school enrollment and participation in educational programs. The court should also inquire if the youth needs educational support services such as tutoring.

What are the youth's secondary and post-secondary educational goals and what actions are being taken to support these goals?

The court should pay particular attention to the post-secondary educational and training goals of older foster youth. For a youth whose goal is to attend college, the court should inquire into whether assistance is needed in the areas of application completion, application for financial aid, and general college counseling. If the youth is interested in vocational training, the court should inquire into what concrete plans have been made to meet that goal. Courts should ensure that youth are aware of any

⁶ For more information on the health needs of youth in foster care and more specific health inquiries for the court see Judith Silver, Ph.D., et al., *YOUNG CHILDREN AND FOSTER CARE*, Paul H. Brooks Publishing Co.(Baltimore, Maryland, 1999); Karen Aileen Howze, Esq., *HEALTH CARE FOR TEENS IN CARE: A JUDGE'S GUIDE*, American Bar Association Center on Children and the Law (Washington, D.C., 2002); *ENSURING THE HEALTHY DEVELOPMENT OF FOSTER CHILDREN: A GUIDE FOR JUDGES, ADVOCATES AND CHILD WELFARE PROFESSIONALS*, New York State Permanent Judicial Commission on Justice for Children.

⁷ See Blome, W.W., *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Sample of Non-Foster Youth*, 14 *CHILD AND ADOLESCENT SOCIAL WORK JOURNAL* 41-53 (1997).

special state and national scholarships available to youth in foster care.⁸

Is the youth eligible for special education services?

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, 34 C.F.R. Part 300, and corresponding state laws entitle eligible children with disabilities to a free, appropriate public education. School districts must identify, locate, and evaluate all children with disabilities residing in the district, including children attending private schools, who are in need of special education services. Once a child is evaluated and determined to be eligible for special education, the district must provide an appropriate education in the least restrictive environment. Services are provided through an Individualized Education Program (IEP), which may include specialized instruction; related services (e.g., occupational therapy; physical therapy; speech therapy; emotional support services and counseling; etc.); assistive technology and services; behavior intervention programs; and transition services. If a youth is not already receiving special education and there are indications that s/he may have special education needs, the child should be evaluated by the school district. (The youth's parents will have to request the evaluation. If the youth's parents are not available to participate in the special education process, the child welfare agency should seek appointment of a "surrogate parent" since the law prohibits caseworkers from signing off on evaluations and IEPs.)

If the youth is eligible for special education services, what transition services have been included in the IEP?

Beginning at age 14, a youth's IEP must state the child's transition service needs, focusing on the child's course of study, such as participation in advanced-placement courses or a vocational education program. At age 16, the IEP must delineate the transition services that will be provided to address these needs, including a description of linkages to other service-providing agencies (i.e., mental health support). Transition services include instruction, community experiences, the development of employment skills, and other services that help youth achieve post-school adult living objectives. When appropriate, transition services also should include activities to help the student acquire daily living skills. For example, if a student with a disability will be living in a group home and participating in supportive employment, his/her transition plan may include instruction in daily living and job skills (i.e., how to use public transportation, handle money, or go to the store). If the student will be going on to a program of post-secondary or vocational education, his/her transition services must include all of the courses that are prerequisites for entering that program.

QUESTIONS JUDGES SHOULD ASK AT PERMANENCY HEARINGS: NEEDS OF YOUTH WITH DISABILITIES

What IL services has the youth with disabilities received?

Youth with disabilities who are in foster care are entitled to independent living services to the same degree as all other youth in foster care. FCIA makes clear that IL services must be provided for youth "at various stages of independence," including those youth with disabilities. 42 U.S.C.A. § 677 (b)(2)(C). Youth with disabilities may need additional and specialized programming to help them achieve independence, and child welfare agencies must provide developmentally appropriate IL services.

If the youth is mentally retarded, is he or she receiving services from the state office of mental retardation?

A youth who is classified as mentally retarded should be receiving services through both the state's office of mental retardation and the child welfare agency. It is often critical that these youth be classified as mentally retarded before age 18 –to be eligible for services through the mental retardation system as adults. Connecting these youth to the mental retardation system is crucial as that system provides specialized housing, treatment, educational, and employment services.

If the youth has a disability, has SSI been applied for?

⁸ Some states provide tuition waivers and other scholarships to foster youth. The court should insist that the agency make youth aware of these opportunities.

Supplemental Security Income (SSI) is a means-tested federal benefit provided to persons with disabilities. The application is filed with the Social Security Administration and the applicant is required to submit medical and/or mental health information to demonstrate that he or she has an impairment that affects the ability to function in daily life or to work.⁹ It is particularly important to identify and establish SSI eligibility for youth who will soon be aging out of care. While a youth may not receive, or be eligible for, the full financial benefit of SSI while in care,¹⁰ the child welfare agency should use some portion of the SSI funds to help the youth address any of his/her special needs or receive medical and rehabilitative treatment not covered by Medicaid. Establishing eligibility while in care can facilitate the transition upon discharge, whether it is to a supportive living situation or to independence.

QUESTIONS JUDGES SHOULD ASK AT PERMANENCY HEARINGS: NEEDS OF YOUTH WITH CHILDREN

If the youth is pregnant or parenting, have her or his rights as a parent been explained?

A dependent child who has a baby has the same parental rights and constitutional rights to family integrity as any other parent. A dependent child's baby should not be adjudicated dependent unless one of the criteria for dependency exists for that baby. Merely being born to a dependent youth is not a ground for dependency. These rights must be reiterated to child welfare agencies as well as to young parents.

Is the parenting youth placed with her child? If not, what is the justification for splitting the family unit?

In addition to having the same rights as any parent, a parenting dependent youth is entitled to an appropriate placement that best meets her needs. For most dependent youth who have a child, an appropriate placement means being placed with the child. Judges should be aware of state laws which make the right to be placed together explicit.

What IL services are being provided to address the youth's parenting needs?

A dependent mother or father should be offered many of the same IL services as other youth. Youth who are parents may need some other services to assist in developing their parenting capacities, including parent skills training and support groups to help them deal with the challenges of being a young parent. These services may also include day care services for their children so that they can pursue their educational, vocational, and treatment goals.

⁹ The disability standard differs depending on whether the applicant has reached age 18. See 42 U.S.C.A. § 1382c(a)(3)(A) for the adult disability standard and 42 U.S.C.A. § 1382c(a)(3)(C)(I) for the childhood standard.

¹⁰ The Social Security Administration counts Title IV-E money used for a youth's placement as the child's income for the purpose of determining income eligibility for SSI.

COURT CHECKLIST FOR PERMANENCY HEARINGS INVOLVING YOUTH AGES 16-21

PERMANENCY

- What is the youth's permanency plan goal?
- Where is the youth living or going to live?
- How long has the youth been in this placement?
- Is this the most family-like setting available to the youth?
- Is this a long-term placement (planned to continue past age 18)?
- For a youth who is a parent:* is the youth placed with her child?
 - If no, why is the youth not placed with her child?
- Is there a relative involved with the youth?
 - If yes, is this relative a placement resource for the youth? What services would enable this relative to become a placement resource?
- Is there any other supportive adult involved with the youth?
 - If yes, is this adult a placement resource for the youth? What services would enable this adult to become a placement resource?
- Has adoption been re-explored with the youth?
- Is the youth in an age-appropriate placement that allows him/her to practice IL skills?

INDEPENDENT LIVING SKILLS

- What skills does this particular youth still need to develop in order to make a successful transition to independence?
- To what services has this youth been referred to assist him/her in acquiring independent living skills?
- What services is the youth currently receiving to help him/her acquire independent living skills?
- What independent living goals have been achieved? What progress in being made towards the other goals?

EDUCATION AND VOCATIONAL TRAINING

- Is the youth involved in any academic or training program?
 - If yes, what are the goals of the program and what is the youth's progress?
- Does the youth require any support services to complete this academic or training program?
 - If yes, what services does s/he need? Are they currently being provided?
- Is the youth currently employed?

PHYSICAL HEALTH, MENTAL HEALTH AND OTHER NEEDS

- Does the youth have any special physical or mental health needs? Any need for substance abuse treatment?
 - If yes, what services is the youth currently receiving to address these special needs?
- Does the youth have access to family planning services and education?
- If the youth has special mental health needs:* will the youth need supportive housing?
 - If yes, has a referral been made to the appropriate office of mental health?
- If the youth has a physical health condition:* will the youth need supportive housing?
 - If yes, has a referral been made to the appropriate housing resources which can provide support or accommodations?
- If the youth is a parent:* is the youth receiving parenting skills training?

YOUTH WITH DISABILITIES

- Is the youth eligible for special education?
 - If yes, are the youth's parents able to participate in the special education planning process or does the school district need to appoint a surrogate parent?
 - If yes and the youth is age 16 or older, what transition services are listed in the youth's Individual Education Plan?
- Has a referral for vocational services been made?
 - If yes, what vocational services are being provided?
- Has the youth been identified or assessed as mentally retarded?
 - If yes, has the youth been found eligible for MR services in the appropriate locality or state?
 - If yes, what specialized services has the youth received?
- Has the youth applied for SSI?

DISCHARGE OF YOUTH ON OR AFTER AGE 18

- Can the youth stay in care until age 21?
 - If yes, has the youth been informed of the requirements that must be met to stay in care?
- If the youth has not opted for an extension of care, what is the youth's reason for making this choice?
- Has the youth been informed that he or she can receive services from the children and youth agency until age 21 after being discharged?
- Has the youth been informed of the state's room and board policy?
- Has the youth been informed of any medical insurance provided by the state to youth aging out of care?
- Has the youth been informed of the availability of state or federal scholarships or tuition waiver for youth aging out?
- Has a satisfactory discharge plan been presented?