

Supreme Court Children's Commission
2013 Report to Supreme Court of Texas



SUPREME COURT OF TEXAS PERMANENT JUDICIAL
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Supreme Court of Texas
Children's Commission

2013 Annual Report

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Message from the Executive Director

In the past few years, the Children’s Commission has spent much of its time focusing on how well the Texas child welfare system fares in finding children in foster care legally permanent, stable homes, whether through reunification with their families, permanent legal conservatorship with relatives or other persons, or through adoption by relatives or other persons who have made that very profound commitment. But child well-being has risen to the top of the child welfare agenda at the national level, and a slate of legislation passed by the 83rd Texas Legislature in 2013 evidenced a shift in the state’s focus as well.

A large body of research and science points to the need to create nurturing environments where children develop along a healthy trajectory physically, cognitively, emotionally, behaviorally, and socially. Unfortunately, when adverse childhood experiences and trauma occur, development can be derailed.¹ Creating a nurturing environment is an important and sometimes difficult task for parents caring for their own children, but when the state is charged with providing a nurturing environment through kinship and foster care, the prospect becomes more daunting to say the least, and at times, seems impossible.

For the Children’s Commission, helping judges and attorneys understand what is meant by child well-being is especially important because judges are charged with ensuring that child well-being is maintained – or at least does not deteriorate – while the child is in foster care. Attorneys too serve a significant role in that they must advocate for services and supports critical to child well-being.

The summaries provided in this report are a compendium of much bigger projects established through a collective agreement that they are important to our state. They have prospered from the tremendous effort of dozens of stakeholders and hundreds of hours devoted to what has always been our mission: to strengthen courts for children, youth and families in the Texas child-protection system and thereby improve the safety, permanency, and well-being of children.

¹ Child Well-being: A Framework for Policy and Practice, University of Chicago Chapin Hall <http://www.chapinhall.org/events/policy/child-well-being-framework-policy-and-practice>

2013 Projects

Education Needs of Children in Foster Care

Texas has taken great strides to implement the recommendations contained in the *Texas Blueprint: Transforming Education Outcomes for Children & Youth in Foster Care*, issued in 2012, in an effort to further the collaboration started by the Children's Commission Education Committee in 2010. The Children's Commission owes a debt of gratitude to all of its partners in this endeavor, including the Texas Department of Family and Protective Services (DFPS), the Texas Education Agency (TEA), the Texas Association of School Boards (TASB), Texas Court Appointed Special Advocates (CASA), and Casey Family Programs, to name a few. Many fantastic things have happened at the local level across the state, from school district foster care liaisons working with DFPS to ensure children have the opportunity to remain in their home schools to judges asking more questions about education during Child Protective Services (CPS) hearings.

Although it took two years to issue the *Texas Blueprint*, the Education Committee knew that the work would not end there and that only through implementation of the recommendations would real systems change occur. With the momentum created by the Education Committee's *Texas Blueprint*, much progress has been made.

Texas Blueprint Implementation Task Force Meetings and Workgroups

During 2013, the *Texas Blueprint* Implementation Task Force finalized its membership. Like the Education Committee and its subcommittees, the Task Force and its workgroups are multi-disciplinary in nature, with representatives from the court, child welfare, and education systems. The Task Force met in January, April, June, and December. (Please see [*Texas Blueprint Implementation Plan, December 2013*](#) for more information about the Task Force members, objectives and benchmarks).

The Task Force prioritized all of the *Texas Blueprint* recommendations and formed three multidisciplinary workgroups based on the highest ranking priorities:

- Training and Resources
- School Stability
- Data

The workgroups began meeting in July 2013 and will continue to meet until the end of 2014. Each workgroup established an action plan, which uses the prioritized *Texas Blueprint* recommendations as its benchmarks; many of these benchmarks will be met by the end of the Task Force's duration. For those requiring a longer period of time to accomplish, the Task Force will advise the Children's Commission on how best to move forward.

The Task Force meetings typically involve updates from the workgroup chairs, discussion of challenges and issues that have arisen, and input from the Task Force on how to address the many challenges.

Implementation Highlights since the *Texas Blueprint's* Release

Texas Foster Care and Education Summit Held:

Approximately 200 judges, school district and Education Service Center (ESC) representatives, DFPS and CASA staff, and state level advocates attended Texas' first Foster Care and Education Summit held February 19-20, 2013. Justice Eva Guzman and the DFPS and TEA Commissioners issued a joint invitation to ESC directors from the 20 education regions of Texas, approximately 30 superintendents from school districts identified as having a significant number of foster students enrolled in their schools, judges whose jurisdictions correlated with those identified school districts, and a select number of DFPS and CASA program staff. Justice Guzman, Judge Patricia Macias, and Commissioners John Specia and Michael L. Williams helped open the Summit, setting the stage for state, regional, and local collaboration. One of the goals of the summit was to allow DFPS and judges to become more familiar with the school districts within their jurisdictions. The summit raised attendee awareness that educational outcomes of children and youth in foster care are very poor and that the education, judicial, and CPS systems must work together collaboratively to improve those outcomes. Several seasoned judges mentioned that they had never had contact with their school districts before the summit. The summit led to new collaborations and attendees left with a renewed awareness of how they contribute to the challenges and what they can do to help. For example, one judge in Bexar County issued a memo to attorneys and guardians appointed on CPS cases about the *Texas Blueprint* and its recommendations. Another judge began requiring CPS to include information in its removal affidavits about where

the child was attending school when the child was removed from the parent and what efforts CPS made to keep the child in his or her current school. Several school districts reported they made sure a foster care liaison was identified in their districts, and approximately half of the 1,200-plus school districts have identified a foster care liaison since the summit.

For more information, please see the Children's Commission's Education Website: [Foster Care and Education Summit: Texas Takes Next Step to Improve Education Outcomes of Children and Youth in Foster Care](#)

Key Legislation Passed for Foster Students:

During the 83rd Texas Legislative Session in 2013, four significant bills passed that will impact school outcomes of foster students:

- 1) House Bill 2619 – requires that DFPS notify schools of the identity of the child's education decision-maker when the court grants DFPS the right to make education decisions for the child and DFPS delegates some of those school-related decisions to an individual. It also requires that attorneys and guardians ad litem be familiar children's educational needs and goals prior to statutory hearings, and that judges consider children's educational needs at hearings. The bill also allows for excused absences from school due to student attendance at court-ordered mental health or therapy appointments or family visitation, and allows any foster student to continue to attend the school in which the student was enrolled immediately before entering foster care until the student successfully completes the highest grade offered by the school. As DFPS moved forward with implementation of HB 2619, it developed a new Education Decision-Maker form (Form 2085-E) with input from the Task Force members;
- 2) Senate Bill 832 – in addition to school districts, now open enrollment charter schools must appoint foster care liaisons; districts and charter schools must provide liaisons' names and contact information to TEA; TEA must provide information to the liaisons on practices for facilitating enrollment or transfer of foster students;
- 3) Senate Bill 833 – requires TEA to collect data about foster students through its Public Education Information Management System; and

4) Senate Bill 1404 – requires TEA to develop procedures for awarding partial credit, reviewing credits and personal graduation plans, allowing students previously enrolled in a course required for graduation the opportunity to complete the course prior to the beginning of the next school year, and ensuring foster students in 11th and 12th grade are given information about postsecondary education tuition fee waivers. It also requires school districts to offer intensive instruction to students not likely to graduate on time, and to award a diploma to any 11th or 12th grade foster student who transfers to a different district and meets the graduation requirements of the transferring district. Also, it addresses excused absences for court-ordered activity related to a CPS case provided it is not practicable to schedule the participation outside of school hours.

The passage of these four bills highlights how far collaboration has come in Texas; language of the bills was vetted by TEA, DFPS, TASB, and others.

See <http://education.texaschildrenscommission.gov/resources/law.aspx>.

Additionally, TASB, TEA, DFPS, and the Children’s Commission all took part in interviews conducted by the U.S. General Accounting Office to determine how Texas is meeting the education stability provisions of the federal Fostering Connections Act; parts of the recently enacted Texas legislation will assist in promoting the education stability envisioned by this national mandate.

New Texas-Specific Websites about Education of Foster Students:

TEA and the Children’s Commission developed websites to provide resources and links for stakeholders interested in improving school outcomes of foster students, found at:

- [The Texas Blueprint: Transforming Education Outcomes for Children and Youth in Texas Foster Care](#)
- [Texas Education Agency - Foster Care & Student Success](#)

Texas Foster Care and Student Success Resource Guide Produced by Texas Trio Partners:

In October 2011, TEA, in partnership with DFPS, the Children’s Commission, and the Houston Independent School District, received a 17-month grant to support collaboration between education, child welfare, and the courts in Texas. In addition to

many collaborative meetings and other deliverables, the Texas Trio project produced a 134-page guide for education stakeholders about foster care, highlighting the unique needs of children in care, and how to support foster students in the school setting. The Resource Guide has received tremendously positive feedback and Texas Trio partners are disseminating it across Texas. The Resource Guide is available in interactive PDF format at: [Texas Foster Care and Student Success Resource Guide](#).

Enhanced Awareness of Importance of Education of Foster Students within DFPS and with Stakeholders:

DFPS continues to dedicate significant staff time at the state and regional level and has made substantive changes to its policy and practices regarding education of foster students. The agency modified its court report template to require CPS caseworkers to include more information about the educational status of children in care. It also changed its policy and residential contracts to require caretakers of children in licensed foster placements or CPS caseworkers for children in non-licensed placements to formally withdraw foster students from school upon a change in school placement. This change in policy will hopefully result in school records being transferred more quickly. In addition, each child's Education Portfolio now includes a section for Pre-K records.

Perhaps most importantly, DFPS is in the process of updating its education policy to address enrollment, records transfer, and other issues raised by the Education Committee and the Implementation Task Force. This is in addition to the creation of the Education Decision-Maker Form 2085-E, rolled out in September 2013, which will help schools know who to contact when school issues arise with students in foster care. The Form 2085-E may be viewed here: http://www.dfps.state.tx.us/site_map/forms.asp

TEA Shows Great Support of the Educational Success of Students in Foster Care:

Following the Education Committee, TEA hired a Foster Care Education and Policy Coordinator whose job is to raise awareness of the unique needs and challenges of foster students within the agency and among education stakeholders. TEA created and now maintains a listserv with over 700 registered users for the foster care liaisons in the school districts. TEA partnered with Connect EDU, an online portal designed to assist students with postsecondary education planning and preparation, to pilot a website to assist with career and college readiness that includes specialized foster care

information for foster students interested in pursuing postsecondary education. The Children’s Commission provided input for the 2012 Student Attendance Accounting Handbook, including use of the term “foster parent” and adding Texas Family Code statutes about child attendance at permanency and placement review hearings. Excused absences for attendance at court-ordered activities in CPS cases are also now included in the 2013 TEA Student Attendance Accounting Handbook. TEA has also issued several “To the Administrator” letters addressing: 1) educational needs of students in foster care, August 2012; 2) mandatory reporting of child abuse and neglect, March 2013; and 3) foster care awareness month with links to foster care and education resources, May 2013.

Texas Work on Data Sharing Recognized Nationally:

In 2013, Texas was included in two national programs highlighting the exchange of aggregate data between TEA and DFPS

- The Casey Shared Learning Collaborative
- Georgetown University Center for Juvenile Justice Reform Information Sharing Certificate Program.

The Texas team was honored to be invited and accepted to both programs and will use the information learned to support the efforts of the *Texas Blueprint* Implementation Task Force Data Workgroup in 2014.

Judicial Resources Made Available:

The Children’s Commission developed and disseminated several new resources for judges regarding foster care and education, including:

- Foster Youth Education Judicial Checklist
- Education Chapter in the Texas Child Protection Law Bench Book
- Back to School - New Legislation and Resources to Help Improve Education Outcomes of Students in Foster Care (Jurist in Residence Letter sent to judges responsible for CPS cases)

On the horizon:

- Continue to expand the collaborative work between the courts, education and child welfare on the state and local levels
- Begin work on attorney and stakeholder tools and resources, including developing education advocacy training for attorneys and CASA
- Continue addressing substantive issues during the workgroup meetings and produce recommendations later in 2014 for consideration by the Task Force

These are just a few of the highlights of the work that has happened since the Education Committee released the *Texas Blueprint* in 2012. A very high level of commitment and dedication to this initiative on the state, regional, and local levels continues and the collaboration begun by the Education Committee has taken hold across Texas.

Trial Skills Training for Court Appointed Lawyers

In January 2013, the Children’s Commission completed a hands-on Trial Skills Training curriculum with the assistance and insight from members of the Trial Skills Workgroup.

The curriculum was designed to track the stages of a final trial on the merits in a termination of parental rights case and concerned a typical CPS case involving a mother, three fathers, and three children of varying ages, plus mental health, substance abuse and addiction, and incarceration issues. The case materials included related legal pleadings, court and case documents and forms, expert witness statements and profiles, medical, business, and criminal records, and exacerbating and mitigating facts for both sides.

The core faculty first trained in Austin with the Children’s Commission staff in 2013 to develop all aspects of the curriculum and later trained with Professor Peter Hoffman, a member of the Trial Skills Workgroup and NITA faculty member, on how to present the curriculum to child welfare attorneys around the state.

The faculty also filmed a live webinar on “Trial Skills in the CPS Case” at the State Bar of Texas, which kicked-off the Trial Skills Training Pilot in Austin on October 23-25, 2013. The 3.75 hour CLE was viewed by 617 attorneys and judges across the state. This presentation became a part of the growing video library of CPS Mentor Series CLEs at the State Bar of Texas, which is free to attorneys who accept court appointed CPS cases or who represent the child welfare agency.

Nineteen participants attended the pilot Trial Skills Training in October 2013, featuring an equal number of state, parent, and child’s attorneys from 14 different counties. Four DFPS caseworkers and three pediatric fellows served as mock witnesses. The pilot received excellent reviews and constructive criticism by participants, faculty, staff, and attorney colleagues and jurists knowledgeable about the participants, all of which have been incorporated to improve the program going forward. A second Trial Skills Training was scheduled for April 2-4, 2014. Based on the feedback received, the curriculum was expanded to three days in order to effectively cover all material. A new venue was also secured, with more room for a courtroom-like setting.

Hearing Quality in CPS Cases

The Children's Commission continually examines the role of the judicial system in improving lives and outcomes of children and families involved in the Texas child welfare system. Court practices have a profound impact on a child's ability to exit the foster care system in a timely manner, especially exiting to what is considered to be a good outcome. Courts are also in a unique position to help ensure parties have good legal representation and experience court hearings that are meaningful and thoughtful enough to provide a sense of quality and fairness.

The judicial system in Texas is decentralized and there is a great deal of variation in the judicial handling of child welfare cases across its 254 counties. In the summer of 2013, the Children's Commission conducted an observation and data collection study, called the Hearing Quality Observation Project, involving 164 child welfare hearings held across Texas. The primary purpose of the project was to establish a baseline about the quality of court hearings occurring in child welfare cases in Texas, including hearing factors such as timeliness and length, depth of issues discussed, party and judicial compliance with the Texas Family Code, parental due process, party engagement, children's appearance in court, attorney preparedness, and attorney and parent satisfaction with legal representation.

The courts observed were in urban and rural areas, and included district courts, county courts at law, and Child Protection Courts (CPC), and were presided over by district judges, associate judges, and assigned judges.

The court observations involved the use of an observation tool designed to capture whether relevant issues were addressed at hearings by using a set of Due Process and Well-Being Indicators to track the frequency with which issues were discussed in the hearing or case file. The observation tool also captured data on the type of hearing, hearing length, which parties were present and the parties' level of engagement, and how the lawyers in the case advocated on behalf of their clients. Case file reviews were also conducted for each of the cases observed in court to gather background information on the history of the case. There were 36 quality indicators affecting due process and child well-being as well as federally mandated findings related to reasonable efforts and the Indian Child Welfare Act (ICWA). The tool also measured steps taken to inform parties of the case status, upcoming scheduled hearings, and next

steps. Although not all indicators were relevant or applicable in every hearing due to the unique characteristics of each case and the type of hearing observed, making note of those addressed or not addressed highlighted areas needing further training and/or statutory or policy changes.

Indicators

Due Process Indicators	<ul style="list-style-type: none"> •Identify All Parties Present •Inquire About Absent Parties •Address Service on Parties •Issue Orders Regarding Parties without Service •Admonish Parents of Right to an Attorney •Admonish Parents of Termination of Parental Rights •Indian Child Welfare Act Inquiry •Reasonable Efforts Finding •Issue Clear Orders and Next Steps •Set Next Hearing
Well-Being Indicators	<ul style="list-style-type: none"> •Current and Alternative Placement •Mediation or Family Group Decision-making •Visitation with Parents, Frequency of Attendance, and Changes •Visitation with Siblings •Educational Plans and Needs •School Readiness, Education Decision-maker, School Stability, IEPs/Special Education, Enrollment/Records, Extracurricular Activities, Grades/Passing •Medical Care •Psychotropic Medication, Appropriateness, Side Effects, Taking as Prescribed

The Hearing Quality Observation Project was comprised of data collection and analysis and the production of this report, which includes findings from the data collected and recommendations to address these findings. The study, as discussed more fully below, highlights several important issues: 1) courts should schedule a maximum of 15 hearings per half day; 2) hearings must last at least 10 minutes to allow sufficient time to address the relevant and pertinent issues and thus result in an effective and meaningful hearing; 3) courts and the child welfare agency must engage more actively, and deeply, in a discussion regarding reasonable efforts, which is required by state and federal law; and 4) Texas must continue efforts at training legal stakeholders about ICWA.

The hearing quality observation project revealed that the majority of Texas child welfare courts address statutorily required issues at some point in the case and many courts are sufficiently assessing aspects of the child's well-being while in foster care. There are a few indicators, both statutorily required and national best practices, which might result in better outcomes for children and families, if addressed more often in court. While some information does appear in the case file, the presence of the information in the case file does not necessarily mean that the judge, the parties, or the attorneys are fully informed about the issue or that the information is correct and up to date. Therefore, it is advisable that judges and attorneys discuss as much of the information relevant to the case in the court hearings as possible. The following recommendations highlight areas of inquiry that should be discussed more often in the courtroom and efforts courts can take to enhance the depth and breadth of the information presented.

Recommendations from the full report:

- ***Consider using specialized judges and/or engage in more specialized training***

The CPC courts observed covered more relevant indicators and had higher engagement of parties than non-CPC courts, even after controlling for geography and other factors, such as docket size. Generally, CPC judges are specially trained judges who have a singular attention to child protection cases. Their dockets are structured in a way that allow more time per case and increased engagement with cases and parties, and the courts have a case management system that systematizes the workload. These three factors, working together, help ensure that CPC courts address statutory requirements, implement best practices, and engage parties in the proceedings. Jurisdictions should evaluate whether they might move toward specialization of the judges handling these cases and judges who handle these cases should strive to engage in specialized training to more effectively bring children to safe, permanent outcomes.

- ***Judges should consider the use of the bench book, bench cards and checklists***

Although experience handling these cases is beneficial, even experienced and specialized judges did not consistently cover all areas of inquiry. Judges may find that checklists, bench cards or other aids designed to remind judges of relevant factors to consider may result in more thorough and meaningful hearings. Using bench cards or checklists to prepare hearings, judges could note issues that especially need to be

addressed during the hearings. A short time spent on preparation will also help judges conduct effective hearings on limited docket time.

- ***Set Fewer Cases on the Dockets to Allow for More Thorough Hearings***

The study shows that there is a clear cut-off point of 15 cases to be heard on the docket for a half-day, either in the morning or the afternoon. Beyond 15 cases, there was a marked decrease in the number of indicators addressed in the hearings and the review of plans for children and families as larger dockets naturally have more time constraints. Full consideration of the issues at play in a case enhances child and family well-being; docket case load impacts the breadth and depth of the discussions in the hearings. In balancing the need to hear as many cases as possible in a given day, 15 seems to be the maximum number of cases to set on a half-day docket where there is enough time and resources to cover the necessary issues in each hearing.

- ***Increase Length of Time of Hearings***

Not surprisingly, hearing length is directly associated with the number of issues addressed in court. According to the study, hearings that lasted 25 minutes or more covered the most issues in depth and breadth, had higher engagement of parties, and addressed plans for the children and parents. However, at 25 minutes per hearing, a court could only schedule about 10 hearings in half a day. The maximum of 15 cases for a half-day is recommended; even when the optimal length of 25 minutes cannot be achieved in every case, hearings should always last longer than 10 minutes. The study showed that there was a dramatic difference in hearings that lasted less than 10 minutes and hearings that lasted more than 10 minutes as indicated by the jump in the percentage of relevant indicators addressed. This is especially true in Placement Review Hearings, which were more likely to last only a few minutes compared to any other type of hearing. Hearings should last a bare minimum of 10 minutes, but judges should aspire to spend 25 minutes on a hearing when possible.

- ***Statutory Hearings Should Be Set at Specific Times***

Many families, caseworkers, and attorneys spent up to four hours waiting for their cases to be heard. Such delays cost both time and money. Caseworkers spending long days in court are deterred from work on other cases. Also, a child or youth waiting for a hearing to be called might miss school for a good portion of the school day. One court observed set a case for hearing every 20 minutes throughout the docket and another set three to seven cases every hour; these might be promising docketing practices other

judges might consider. Judges should avoid setting all cases at one time but rather attempt to set their cases in different time slots throughout the docket or in small clusters of a few cases per hour to cut the waiting time. Local docketing changes should be examined to determine whether setting hearings at specific times will help decrease waiting times, which in turn could reduce attorneys' fees and other costs related to lengthy wait-times.

- ***Judges Should Prepare for Hearing in Advance***

Due to the limited time for hearings, reading CPS, CASA, and attorney ad litem reports, if filed in the court's jurisdiction prior to the hearing, will help the judge focus on important issues for each child and avoid the need to fish for information during the hearing. In addition to reading these reports, judges should review docket sheets and court files to check service on parties, ICWA compliance, timely appointment of attorneys, and other issues.

- ***Make Reasonable Efforts Findings from the Bench***

The Texas Family Code has codified federal statutes that require the agency to make reasonable efforts to avoid removal, to reunify the child with the parents, and to finalize the permanency plan for the child.² These findings are important because funding for the child welfare agency is tied to them, but more significantly, an articulation of the reasonable efforts helps hold the child welfare agency accountable for the work done outside the courtroom to promote family stability and the child's safety, well-being, and permanency. However, a vast majority of the courts made no specific findings or ever mentioned reasonable efforts in hearings, but rather included boilerplate language on reasonable efforts in the court orders. If judges take the initiative to make specific reasonable efforts findings in court, it will spur a more substantive discussion of the agency's efforts with children and families at every point in the case. Almost every judge who participated in the study said that the absence of and inadequate work done by caseworkers is the biggest problem they confront. Making reasonable efforts findings from the bench, which are directed at DFPS and its efforts to assist the family rather than to the parents and their compliance or progress against the plan, sends a message that there is a minimally acceptable level of case work in these important proceedings.

² Tex. Fam. Code Ann. §§ 262.107(a)(3); 262.201(b)(3); 263.306(E); and 263.503(a)(8).

- ***Greater Emphasis on Determining the Applicability of ICWA***

Any child who is an unmarried person under the age of eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe qualifies for certain protections under the Indian Child Welfare Act.³ If a child before the court falls within the parameters of ICWA, it will affect the court's jurisdiction as well as placement issues. Only 4% of the judges observed addressed ICWA in the hearings. Judges appeared to be unaware of ICWA or were relying on the case files to establish ICWA information. Failure to address ICWA can have serious ramifications for the child and the family because discovering a child's Native American status late in the case can cause traumatic placement disruptions and delay permanency. Relying on agency data may also be detrimental to the case. Observations revealed that often the caseworker had incomplete or incorrect data, i.e., information from only one parent or from a caseworker who filled out the required forms based on the visual appearance of the child. These assumptions are problematic because the appearance of the child is not necessarily indicative of the child's heritage. Since CPS data should not be relied on exclusively, it is imperative that judges take the initiative to ask about ICWA early on in the case, preferably at the Adversary Hearing and note in the court's order and file that the question was asked and answered.

- ***Frontload Procedural Issues by Addressing Them During Early Hearings***

If all of the procedural issues are addressed at the beginning of the case, there is more time to spend on other issues such as child well-being and family service plans in later hearings. Judges should address all of the procedural issues, such as service on the parties, ICWA, notice to extended family members, and establishing parentage during the Adversary and Status Hearings. Adopting this procedure would also help to avoid an extension being granted due to failure to meet due process requirements in the case.

- ***Continue to Address Service at Every Hearing***

Judges and attorneys do a good job bringing up service at the beginning of the case, but lingering service issues are often not brought up in court again, leaving them unresolved until very late in the case. Judges should continue to address service when it is an issue after the Adversary Hearing, particularly if legal pleadings are amended. Especially if a

³ Indian Child Welfare Act of 1978, 25 U.S.C. § 1901, *et seq.*

parent is not present, judges should inquire about service at the Status Hearing and the initial and subsequent Permanency Hearings, if necessary.

- ***Admonish Parents of Right to an Attorney at Every Statutorily Required Hearing***

Parents often appeared without attorneys at later stages in the proceedings and were not admonished of their right to an attorney. It is possible that the judge had admonished the parent in previous hearings, but it was not noted in the file. The Texas Family Code now requires that the court admonish the parent of his or her right to a court appointed attorney at every hearing held under Chapter 263.⁴

- ***Review Permanency Plans and Concurrent Plans More Often***

Children’s permanency plans for the children were not reviewed in one-third of the hearings. Moreover, concurrent plans were very rarely reviewed in court. The primary purpose of the court proceedings is to move children to permanency, either by reunification or through some other means, so it is imperative that the court review both the primary permanency plan and the concurrent plan, which acts as a contingency plan in case the primary goal cannot be reached. The court should review the plan, whether it is achievable, and progress on achieving the plan. This review also aids the court to make findings that DFPS has made reasonable efforts toward finalizing a child’s permanency plan.

- ***Give More Emphasis to Child Well-Being in Placement Review Hearings***

It is essential that judges take time to inquire about the well-being, education, and health of the child, particularly those in long-term foster care who rely on the child welfare agency and the court to ensure their quality of life. If a child is not thriving in care, the judge is often the last resort to change the life of that child. Placement Review Hearings that are short in length do not adequately address the child’s well-being and fail to provide appropriate oversight of the agency or identify necessary changes the child may need. Judges should take time to ensure they receive a full picture of the child’s situation, not simply a caseworker’s opinion that the “child is doing OK.” Judges should delve into the child’s medical care, use of psychotropic medications, education, and placement. The Texas Family Code now requires that judges inquire about psychotropic medications and, in many of the hearings observed, whether the child was taking medication was addressed either in the case file or the hearing. However, courts should do more than just ask about whether the child is taking medication. Psychotropic

⁴ Tex. Fam. Code Ann. § 263.0061.

medications have become an important focal point in child welfare in Texas and discussions regarding a child's use of them should include asking if the medication is appropriate, whether the child is taking it as prescribed, and if there are any side effects. Inquiry should include exploration of alternative medications or modifications that might be effective. Judges should also specifically inquire of older youth their opinions and feelings about the medical care they are receiving and about medications they may be prescribed.

- ***Address Sibling Visitation when Siblings are not Placed Together***

If siblings who have a relationship with each other are placed apart, maintaining contact may be vital to their well-being. Courts should ensure that appropriate sibling contact and visits are occurring.

- ***Consider Alternative Placements More Often***

Many courts only looked for alternative placements for a child when the current placement was breaking down. However, it is not uncommon in DFPS cases for a seemingly strong and fitting placement to break down quickly and with little warning. Judges should always inquire of DFPS about alternative plans and placement options to help ensure stability for the child in the event the child's current placement needs to be changed.

- ***Require Children to Attend Court Whenever Possible***

In addition to being a statutory requirement, when children were in court, more relevant issues were addressed in the hearings and the child's plans were more likely to be reviewed.⁵ It has become a national best practice for children to be present at their court hearings, especially as children get older and can better understand what is happening in their cases. Many judges had standing orders that permitted the absence of children from court due to a school obligation or distance, but very few made efforts to have the child present or participating by phone whenever possible. The presence of children had a much more significant impact on the court proceedings than the presence of any other party, indicating that important issues that directly impact the child are more likely to be addressed in court as a result of the child's attendance.

- ***Engage Children and Parents During Hearings***

The study demonstrated that parties engaged with the court almost every time they were asked to participate, but that judges asked questions of children and parents much

⁵ Tex. Fam. Code Ann. §§ 263.302; 263.501.

less often than CASAs and caseworkers during hearings. In some cases, children attended court but were left in the hallway or conference rooms and never got to see or talk to the judge. Similarly, many parents attended the hearings but were never asked to participate or provide their perspectives to the court. Judges should more actively engage children and parents in proceedings by asking them to participate more often, which will bolster their confidence and engagement in the proceedings.

- ***Encourage Caregivers, Particularly Non-Kinship Foster Parents, to Attend Court and Engage Them in Process***

Kinship caregivers were present at many of the hearings but non-kinship foster parents were only present in a handful of cases. The Family Code states that the foster parents and relatives providing care for the child are entitled to be heard in the Permanency and Placement Review Hearings.⁶ Courts may glean valuable information about the child's status from foster parents and other caregivers, so these persons involved with the children should be encouraged to attend hearings and participate in the dialogue.

The findings of the Hearing Quality Observation Project have important implications for judges, attorneys, and child welfare professionals. The study identifies several areas for further emphasis in child welfare hearings going forward, both with regards to statutory requirements and the implementation of best practices. Training opportunities tailored to educate the child welfare lawyers and judges on the specifics of the indicators and how to change practice to address them more often would be very helpful in realizing some of the recommended changes. The results of the study are being communicated with the Children's Commission and the judges who participated in the observations, but it is important that dissemination of the information not stop there. The findings should also be shared with other judges, legislators, child welfare agency workers, county commissioners, and attorneys involved in child welfare proceedings. These stakeholders can take the information in the report and implement policy that effectuates the recommended changes in a way that is appropriate for their community. This collaborative effort across different sectors of the child welfare community will also ensure more comprehensive solutions so the weight of implementing best practices does not rest solely on the judges.

⁶ Tex. Fam. Code Ann. § 263.501.

Advances in Tribal Relationships in Texas

In 2013, the Supreme Court appointed Jo Ann Battise, Senior Peacemaker for the Alabama-Coushatta Tribal Nation, to the Children’s Commission. Senior Peacemaker Battise has shared with the Children’s Commission her rich experiences serving as a Peacemaking Judge, Tribal Council Member, Tribal Administrator, and liaison to the National Council for Juvenile and Family Court Judges. Closer ties to the Alabama-Coushatta have led to an improved focus on tribal and state collaboration in fulfilling the promise of the Indian Child Welfare Act (ICWA).⁷

In 1978, ICWA was passed by Congress in response to the alarmingly high number of Indian children being removed from their homes and placed with non-Indian families.⁸ Prior to ICWA, Indian children were often raised as white children and all cultural and tribal influences were removed. Congress passed ICWA to establish minimum federal standards for the removal of Native American children from their families and to promote the stability and security of Indian tribes and families.

ICWA applies when an Indian child is the subject of a child custody proceeding. An Indian child is any unmarried person who is under age 18, and is either a member of any Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. A child custody proceeding is one that involves foster care placements, termination of parental rights, pre-adoptive placement or adoptive placement. Best practices suggest that a court immediately contact a tribe anytime there is a question about whether an Indian child is involved.

If a child before the court falls within the parameters of ICWA, it affects the court’s jurisdiction, evidentiary requirements and the child’s placement. ICWA requires a higher standard of proof in order to terminate parental rights. The burden of proof is beyond a reasonable doubt. There is an additional requirement that the court make a determination supported by evidence beyond a reasonable doubt, including testimony of a qualified expert, that active efforts have been made to prevent the breakup of the Indian family and, in spite of those efforts, the child cannot be returned to the parent without a substantial risk of serious physical or emotional harm.

⁷ Indian Child Welfare Act of 1978, 25 U.S.C. § 1901, *et seq.*

⁸ *Id.*

Today, the significant consequences of failing to follow ICWA include invalidation of state court proceedings after appeal either by the child or the parent, the possible disruption of a long-standing foster care placement, the voiding of an adoption order, and malpractice actions.

Data collected by the Children's Commission as part of its 2013 Hearing Quality Observation Project reflected that, in 66% of cases observed, ICWA was not addressed in court or indicated in the court's file. Only 4% of judges observed addressed ICWA in the hearing and parties and judges appeared to be unaware of ICWA or relied on the case file to establish applicability. Observations also revealed that often the caseworker had incomplete or incorrect data, i.e., information from only one parent or from a caseworker who filled out the required forms based on the visual appearance of the child. These assumptions are problematic because the appearance of the child is not necessarily dispositive of Native American heritage. Additional survey results gathered from attorneys across Texas that represent the child welfare agency, parents and children, indicate that at least half of the attorneys are unfamiliar with the federal law and many attorneys requested that more CLE be offered on ICWA.

A common belief is that a court is not likely to have native children in its jurisdiction if it is not located near a reservation. There are three federally recognized tribes in Texas: 1) the Alabama-Coushatta; 2) Kickapoo Traditional Tribe of Texas; and 3) Ysleta Del Sur Pueblo of Texas. However, there are many Texans with Indian heritage living in urban and other areas across the state. The 2010 Census Briefs report that 78 percent of Native American people live outside of American Indian and Alaska Native areas. Further, Texas has the 4th largest Native American population in the U.S.

Another misconception is that ICWA does not apply to a child who is not an enrolled member of a tribe. Actually, a child must only be *eligible* to be a member and each of the 562 federally recognized tribes has exclusive authority to determine their own membership criteria in tribal constitutions, articles of incorporation, or ordinances. Each tribe maintains its own enrollment records and records about past members.

The Children's Commission has established relationships with representatives from each of the three federally recognized tribes through collaboration with DFPS, the Center for the Elimination of Disproportionality and Disparities, and the American Indian Section of the State Bar of Texas. In 2013, Children's Commissioner and Senior

Peacemaker Jo Ann Battise began a monthly call with a small workgroup made up of Collaborative Council member Larry Williams, Tribal Law expert Judge Cheryl Fairbanks (New Mexico), DFPS Disproportionality Manager Tanya Rollins and Disproportionality Specialist Michael Martinez. This workgroup planned a half-day judicial round table discussion about ICWA in the wake of the *Baby Veronica* case and best practices in state and tribal collaboration.⁹ This workgroup has committed to ongoing meetings with national experts, state court judges, tribal judges, and child welfare leaders across the state to continue to find solutions and raise awareness of these issues that touch many of the lives of our state’s children and families.

⁹ *Adoptive Couple v. Baby Girl*, a minor child under the age of fourteen years, Birth Father, and the Cherokee Nation, 570 U.S. ____ (2013), 731 S.E. 2d, 550.

Legislative Implementation of Medical Consent and Psychotropic Medication Reform

In 2011, a Children's Commission workgroup came together to create dialogue and understanding between the judiciary, DFPS, and medical providers regarding psychotropic medication use among children in foster care. The workgroup focused much of its effort on the state's use and the usability of the Texas Health and Human Services Commission Psychotropic Medication Utilization Parameters (Parameters), which have been successful in leading to a significant reduction in the overall use of psychotropic medications and a decrease in the use of multiple medications for the same purpose.¹⁰ At the workgroup's request, the Commission hosted a Round Table discussion in July 2012 on the use of psychotropic medication, later issuing a Report on Psychotropic Medication and Foster Care.¹¹ This report helped inform the efforts of many stakeholders during the 83rd legislative session and ultimately resulted in House Bill (HB) 915 being passed and signed into law effective September 1, 2013. HB915 included provisions that: 1) addressed medical consent for the use of psychotropic medication; 2) provided children the right to provide an opinion on their medical care; 3) allowed foster youth 16 and older to act as their own medical consentor; 4) required attorneys and guardians to evaluate medical care; 5) required attorneys and guardians to elicit their clients' views on medical care being provided; 6) required parental notification for initial prescriptions and medication changes for children on psychotropic medications; and 7) mandated that the youth transition plan provided to each child 16 and older include provisions and instructions on handling their own medical care and psychotropic medications.

Following the close of the 83rd Legislative Session, the DFPS Commissioner requested that the Children's Commission facilitate the implementation of HB915. The implementation workgroup was charged with soliciting input and collaboration from approximately 60 stakeholders, which in turn worked on: 1) identifying practices and policies in place to support HB915; 2) making recommendations regarding new policies required to support the implementation and ongoing execution of DFPS duties under the new bill; 3) identifying training needs required to support new practices; 4)

¹⁰ http://www.dfps.state.tx.us/documents/Child_Protection/pdf/TxFosterCareParameters-September2013.pdf

¹¹ Psychotropic Medication and Foster Care, Supreme Court of Texas Children's Commission
http://texaschildrenscommission.gov/media/15003/Final%20Psych%20Meds%20Report%20PRINT_01-10-13.pdf

expanding collaboration and communication to support the objectives and mandates of HB915; and 5) meeting regularly to ensure stakeholder involvement and communication on implementation progress. The HB915 Implementation Workgroup met three times over the summer of 2013. The final meeting was held in March 2014 to review the progress of the many stakeholders and DFPS with implementation of the new law.

Medical Consent:

- DFPS hired 11 new Human Services Technician staff to allow caseworkers to attend medical appointments with the child’s prescribing physician.
- Created a Brochure for medical consenters entitled "Making Decisions About Psychotropic Medications." (available on DFPS website).
- Coordinated with DFPS Residential Child Care Contract staff on changes to the DFPS Residential Contract, which governs entities and individuals who provide care for children and often act as the medical consenters.
- Coordinated with DFPS’ parent entity, the Texas Health and Human Services Commission, and STAR Health (Texas’ Medicaid HMO) on the role of Prescribing Providers in the informed consent process.
- DFPS developed Medical Consent Mailbox to respond to medical consenters’ questions.

Medical Consenter Training:

- DFPS revised Medical Consenter Training, policy, and internal and external communications to include training related to:
 - informed consent;
 - psychosocial therapies, behavior strategies, and other non-pharmacological interventions that should be considered before or concurrently with the administration of psychotropic medications;
 - process and information related to young people who are their own medical consenters;
 - specialized training for Human Services Technicians; and
 - Psychotropic Medication Training for caregivers and medical consenters.

- Collaborated with external stakeholders on Medical Consent and Psychotropic Medication training content.
- DFPS also developed a form for medical consenters to acknowledge in writing that they:
 - have received the medical conserter training;
 - understand the principles of informed consent for psychotropic medication; and
 - understand that non-pharmacological interventions should be considered and discussed with the prescribing practitioner before consenting to the use of a psychotropic medication.

Transition Planning for Youth Aging Out of Care:

- DFPS included in Youth Transition Plan that the court may allow 16 + youths to consent to some or all of their medical care;
- Revised its Residential Contracts and reformed service coordination and management provided by STAR Health for young people over the age of 18;
- Enhanced STAR Health communications and publications to this age group;
- Included new court report prompts for caseworkers to include information for court review;
- Amended DFPS policy; and
- Created new training for staff and caregivers/medical consenters on the issue.

Monitoring Use of Psychotropic Medications:

- DFPS revised its policy, training, and practice. In September and November of 2013, 88% of youth had participated in a follow-up visit with their prescribing physician within 90 days, and many of the remaining 12% were seen within 91 or 92 days.

Parental Notification:

- DFPS started providing verbal notice or email notification to parents, and documenting the provision of notice in IMPACT (statewide child welfare information system).

Non-pharmacological Alternatives

- STAR Health and Cenpatico, which is the entity that provides behavioral health services are working together to increase the state’s clinical capacity for trauma-informed therapy and also evidence-based trauma-informed training for caregivers.
- All residential contracts require that foster parents and institutional staff receive trauma-informed care training.
- Child and family plans of service are now incorporating non-pharmacological interventions in advance or in lieu of psychotropic medications.

Texas was among the first states to proactively respond to the over-reliance on psychotropic medications for children in foster care. In 2005, the enactment of Senate Bill 6 created a comprehensive health-care system and many new statutory safeguards regarding the prescription and use of such medications. This sweeping reform, combined with the release of the Psychotropic Medication Utilization Parameters, steadily reduced the rate of psychotropic medication prescriptions. Later deep collaboration and HB915 brought about reform to improve medical consent, increase accountability, and enhance information sharing to better serve our children’s best interests.

Training, Scholarships, and Technology

Videoconferencing Allows More Children to Attend Hearings

In 2010, the Children’s Commission launched a videoconferencing project to enable many children placed in residential treatment centers to participate in their permanency and placement review hearings without being physically present in the courtroom. The Texas Office of Court Administration (OCA) hosts and supports the hardware and software required to facilitate videoconferencing between courts and residential placements and has published a “How To” for use by judges and other stakeholders who wish to use videoconferencing for a particular hearing. OCA also maintains a list of residential treatment centers and courts with videoconferencing capability. In 2013, OCA added six new courts and 31 residential treatment centers to its system and hosted over 200 hearings.

The Children’s Commission videoconferencing project has grown substantially since 2010. The availability and usefulness of this tool is continuously advertised at commission meetings and judicial and other conferences. In 2014, OCA and the Children’s Commission will work with DFPS, Texas CASA and other stakeholders on expanding capability and feasibility for use beyond court hearings. It will also be used to expand the number of courts participating in the state’s new Foster Care Redesign area, which covers several counties from West to North Texas.

Attorney Scholarships Awarded to Promote Better Legal Representation

In 2013, the Children’s Commission Training Committee approved using CIP dollars for attorney scholarships to attend state and national conferences related to child welfare law. During the year, 77 scholarships were awarded to Texas attorneys to attend the following conferences:

- 21 to the American Bar Association (ABA) Parent and Children’s Law Conferences in July
- 14 to the NACC Annual Conference in August
- 42 to the Child Abuse and Neglect Workshop of the State Bar of Texas Advanced Family Law Conference in August

Judicial Education Offered Through National Conferences.

During July 2013, judicial education was offered through scholarships to judges to attend the National Council of Juvenile and Family Court Judges (NCJFCJ) Annual Conference in Seattle. Each judge who attended the national conference in Seattle also attended the Texas Child Welfare Judges Conference in May 2013.

Texas Child Welfare Judicial Conference

The annual Child Welfare Judges Conference was held May 21-23, 2013 in San Antonio. It was attended by 61 judges and 13 child protection court coordinators. Judge John Specia, DFPS Commissioner, gave his vision for the agency. Other topics included a lunch for new judges hosted by judges experienced in handling CPS cases, a legislative update, and sessions on criminal convictions and relative placements, the legal requirements of Indian Child Welfare Act, safe and stable permanency and child well-being, courtroom management, and vicarious trauma of judges and court staff. The 2014 Conference is scheduled for June in Bastrop.

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