
CHILD AND YOUTH VOICE

A. Presence in Court

1. The Law

Chapter 263 of the Texas Family Code mandates that all children and youth who are in the conservatorship of DFPS attend all permanency hearings. Specifically, [Tex. Fam. Code § 263.302](#) states that the child shall attend each permanency hearing, unless the court specifically excuses the child's attendance, and that 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 the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing. [Tex. Fam. Code § 263.302](#).

The law does not require or appear to contemplate that the child will attend an Ex Parte, Adversary Hearing, or Status Hearing. Although there are different interpretations, many read the law to say that the child must attend each permanency hearing, unless the judge makes an individual determination that excuses that child from attending a specific hearing. Issuing a blanket order excusing a child from attending permanency hearings or even more generally, for all children to be excused from all permanency hearings, is not considered a best practice. Additionally, and of note, youth who are committed to the Texas Juvenile Justice Department may (and should) attend permanency hearings by video, telephone, or in person. [Tex. Fam. Code § 263.302](#).

2. Pros of Involving Children in Court Proceedings

There have been many studies by the American Bar Association as well as Court Improvement Programs around the country on this singular issue, and there is simply no question that children in foster care repeatedly express the desire to be involved in decisions about their lives.²³¹ Children are often told that "the judge makes the decisions." Being involved gives the child a sense of control, helps them understand the process, and direct contact with the court benefits the judge and the youth. There are other reasons to engage a child in court including: attorneys are not always reliable and informed advocates; hearing quality is better when the judge can hear directly from the child, hearings can present an opportunity for parent-child visitation; and foster parents and relatives caring for the child often attend because they bring the child to the hearing.

3. Cons of Involving Children in Court Proceedings

There are also cons of involving or requiring the presence of children in child protection hearings. A few examples include: missed time in school and other important events for the child; information shared in court can be emotionally damaging for children; and children at times may not want to attend. Other obstacles include lack of transportation; court dockets are not accommodating; notice is inadequate; and judges are sometimes uncomfortable speaking with and interviewing children.

B. Child and Youth Engagement

Making court a good experience is critical. Judges can help make the experience for everyone feel more beneficial by utilizing the following practices:

- Ensure attorneys and caseworkers do their job by helping prepare the child for the hearing.
- Learn child-specific interviewing techniques so that engaging the child in conversation is easier. Even young children have the competence to tell adults what they want and need when questioned in an age-appropriate manner. Making court a good experience is critical.
- Restructure dockets, and schedule hearings involving children in the afternoon, after school.
- Try using video conferencing or invite youth to submit personal written court reports.

Generally, every child should appear at every permanency hearing. The Family Code presumes that all children will attend their permanency hearings, but also accommodates the occasion when children should be excused from attending by the judge. The expectation is that the court will excuse a child on a case-by-case basis and not operate under a blanket order or rule.

For a more complete report on the benefits of youth in court and practical tips for accommodating their presence, please read the Children’s Commission’s July 2016 report on Youth Presence in Court Proceedings on the Children’s Commission’s website.²³²

C. Normalcy

1. What Is Normalcy?

[Tex. Fam. Code § 264.001](#) requires court consideration of age-appropriate normalcy activities, defined as an activity or experience:

- That is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group; and
- In which a child who is not in the conservatorship of DFPS is generally allowed to participate, including extracurricular activities, cultural and enrichment activities, and employment opportunities. [Tex. Fam. Code § 264.001\(1\)](#).

In addition to the requirements of [Tex. Fam. Code § 263.306\(a-1\)](#), at each Permanency Hearing before a final order is rendered, the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities, including activities not listed in the child’s service plan. [Tex. Fam. Code § 263.306\(c\)](#).

Additionally, [Tex. Fam. Code § 263.503\(c\)](#) requires that, in addition to the requirements of [Tex. Fam. Code § 263.5031](#), at each Permanency Hearing After a Final Order the court shall review DFPS efforts to ensure that the child has regular, ongoing opportunities to engage in age-appropriate normalcy activities as defined by [Tex. Fam. Code § 264.001](#); this may include activities not listed in the child’s service plan. [Tex. Fam. Code § 263.503](#).

2. Reasonable and Prudent Parent Standard

In determining whether to allow a child in the managing conservatorship of DFPS to participate in an activity, a substitute caregiver must exercise the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.125\(b\)](#).

The Preventing Sex Trafficking and Strengthening Families Act required states to define a “reasonable and prudent parenting standard.”²³³ In Texas, the standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

- The overall health and safety of the child;
- The child’s age, maturity, and development level;
- The best interest of the child based on the caregiver’s knowledge of the child;
- The appropriateness of a proposed activity and any potential risk factors;
- The behavioral history of the child and the child’s ability to safely participate in a proposed activity;
- The importance of encouraging the child’s social, emotional, and developmental growth; and
- The importance of providing the child with the most family-like experience possible. [Tex. Fam. Code §264.001\(5\)](#).

A foster parent, other substitute caregiver, family relative or other designated caregiver, or licensed child placing agency caring for a child in the managing conservatorship of DFPS is not liable for harm caused to the child resulting from the child’s participation in an age-appropriate normalcy activity approved by the caregiver if, in approving the child’s participation in the activity, the caregiver exercised the standard of care of a reasonable and prudent parent. [Tex. Fam. Code § 264.114\(c\)](#).

3. Normalcy Resources

For a more complete report including the importance of normalcy and tips for encouraging normalcy, please read the Children’s Commission’s May 2019 [Normalcy for Children and Youth in Foster Care Round Table Report](#).²³⁴

Capacity Building Center for States, [Having the Normalcy Conversation: A Guide for Discussing Developmentally Appropriate Services for Children, Youth, and Young Adults in Foster Care](#)²³⁵

Texas CASA, [Normalcy for Children & Youth in Foster Care](#)²³⁶

Texas Council of Child Welfare Boards, [Normalcy for Children Resources](#)²³⁷

