

## CLC PRACTICE POINT

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### Placement Advocacy for Clients in Foster Care

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Of Minnesota's 5,410 youth in foster care in 2009, 16.5% were placed with a relative, 43.8% were in non-relative family foster homes, 11.2% were in pre-adoptive homes, and 24.7% were in congregate care—10.1% in group homes and 14.5% in institutions.<sup>1</sup> Youth may spend years in foster care and may live in multiple placements.<sup>2</sup> These youth often live with the insecurity of not knowing where they will live. They may worry about the impact a move will have on their lives. Will they have to start a new school? Will they be able to see their siblings? What will happen to their relationships with their current caregivers? Providing legal representation for youth in foster care in out-of-home placements helps the youth address these uncertainties. An attorney can educate his or her client about placement options and help the client express his or her wishes to the court. This practice point offers information and suggestions about placements to attorneys representing youth in foster care placements.

#### Background

Where a youth in out-of-home care is placed depends on an assessment of the youth's needs that is formalized in an out-of-home placement plan.<sup>3</sup> Depending on a youth's needs, a youth may be placed in a shelter care facility, family foster home, a group home, or a residential treatment facility.<sup>4</sup> Within these types of placements, there are different levels of services that can be provided. For instance, some foster homes are licensed to care for multiple children at one time, while others are designed to provide intensive care to one or two higher-needs youth.<sup>5</sup> The existence of foster homes that provide additional services allows for a higher-needs youth to live in a family environment, rather than an institutional setting.<sup>6</sup> Youth who are placed in institutional settings are entitled to the least-restrictive, most home-like setting possible.<sup>7</sup>

<sup>1</sup> The data for this analysis came from the federal Adoption and Foster Care Analysis and Reporting System (AFCARS), to which each state reports a snapshot of their foster care data every year. National Coalition for Child Protection Reform, Where are America's Foster Children? <http://www.nccprgraphics.blogspot.com> (last visited May 10, 2011).

<sup>2</sup> In CLC's Report on FY 2009 Client Outcomes, Jessie Rosenthal conducted an analysis of a random sample of forty-one of CLC's cases closed in 2009. The average number of placements before representation by CLC was five; the highest number of placements was 22. <http://www.clcmn.org/media/childrens-law-center-report-on-fy-2009-client-outcomes/> (last visited May 11, 2011).

<sup>3</sup> The county social services agency develops an out-of-home placement plan after a youth is first removed from the home of her parent or guardian. Minn. Stat. § 260C.178 subd 7 (2010). The plan is an individualized determination considering the best interest factors. Minn. Stat. § 260C.201 subd. 6 (2010), Minn. Stat. § 260C.212 subd. 2(b) (2010) (best interest factors).

<sup>4</sup> Minn. Stat. § 260C.181 (2010) (shelter care facility); Minn. Rule 2960.3010 subp. 24 (2010) (types of foster homes); Minn. Rule 2960.3010 subp. 23 (2010) and Minn. Rule 2960.3000 (2010) (foster family settings); Minn. Rule 2960.30101 subp. 26 (2010) (foster residence settings).

<sup>5</sup> See, e.g. Minn. Rule 2960.3010 subp. 5 (2010) (basic services provision); Minn. Rule 2960.3010 subp. 43 (2010) (treatment foster care).

<sup>6</sup> For example, Minnesota Intensive Therapeutic Homes (MITH) are designed for children with severe emotional disturbance. <http://sosrecruitment.dhs.state.mn.us/assets/DHS-5228-ENG.pdf> (last visited May 10, 2011).

<sup>7</sup> Minn. Stat. § 260C.212 subd. 1(c)(1) (2010).

Each youth in an out-of-home placement has in-court reviewing hearings.<sup>8</sup> The court reviews the youth's out-of-home placement plan and the reasonable efforts of the county agency to achieve permanency for the youth.<sup>9</sup> Changes may occur both in the placement and in the youth's needs, and additional hearings may occur if the youth's placement disrupts or is about to disrupt after permanency has been determined.<sup>10</sup> If the youth's placement does disrupt, the youth's attorney should receive a notice of disruption.<sup>11</sup> Youth who enter the system often remain in foster care until they age out at 18 or 21.<sup>12</sup>

### Counseling Your Client

- i Know your client's placement history. You may wish to create a chronology or timeline of the placements to organize the information. Having this basic knowledge provides a framework for conversations with your client about what worked and what didn't work at specific placements.
- i Talk with your client about how a placement change would impact your client's life. For instance, you might discuss your client's proximity to siblings, kin, and other people with whom your client has a close connection. Additionally, ask your client if he or she wishes to attend the same school.
- i Talk with your client about permanency on an ongoing basis.<sup>13</sup> If your client wishes to live with or be adopted by a particular relative or family friend, educate yourself about the foster care licensing process or contact CLC.
- i Reach out to your client at least once per month to discuss the status of her placement.
- i When your client tells you she is unhappy about aspects of her placement, or if it seems that the placement is about to disrupt, talk with your client about the type of placement she wants.<sup>14</sup> Contact CLC to discuss alternative placement options that could be a good fit for your client.
- i If your client's placement does disrupt, you should receive a notice of disruption and the proposed new placement. If your client disagrees with the proposed placement, you should then ask the court for a disruption hearing. Contact CLC to discuss preparing for a disruption hearing.

### Advocating For Your Client in Court

- i Educate the court about your client (with your client's permission). As an advocate for your client, you are in the best position to know the most about your client and her history. You should bring the number of placements your client has been in to the judge's attention. Don't take for granted that the other professionals on the case will remember your client's number of placements or other case details.

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<sup>8</sup> For youth in long-term foster care, review hearings are held at a minimum of every twelve months. Minn. Stat. § 260C.201, subd. 11(g) (2010). For state wards and youth adjudicated CHIPS, review hearings are held every three months. Minn. Stat. § 260.317, subd. 3(b) (2010) (state wards); Minn. Stat. § 260C.201, subd. 10 (2010) (CHIPS).

<sup>9</sup> Minn. Stat. § 260C.201, subd. 11(g) (2010).

<sup>10</sup> Minn. Stat. § 260C.201, subd. 11(f) (2010).

<sup>11</sup> *Id.*

<sup>12</sup> Minn. Stat. § 260C.451 (2010) (eligibility for foster care benefits to age 21).

<sup>13</sup> For sample questions and conversation starters for talking with your client, consult CLC's February Practice Point, *Approaching and Advocating the Issue of Permanency*. <http://www.clcmn.org/media/practice-points/> (last visited May 10, 2011).

<sup>14</sup> If the client is in long-term foster care, contact CLC to discuss options. A motion for change in placement can be important in long-term foster care cases since hearings are scheduled at twelve month intervals.

- i If your client is unhappy with aspects of her current placement, with your client's permission, explain to the judge and the professionals working on the case your client's feelings. If doing so does not result in a change in the client's placement, it may be appropriate to file a motion for change in placement on behalf of your client.<sup>15</sup>
- i Ask the court to make specific findings about the youth's best interests and how the placement chosen is consistent with the youth's best interests.<sup>16</sup>
- i Investigate proposed placements. If a placement in residential treatment is proposed, consider calling or visiting to learn more about the facility and the treatment philosophy of the program. Information you gather can be used to educate the court and to support your argument. For example, a residential treatment center that operates on a correctional model may be inappropriate for certain clients. If a change in placement to another family foster home or group home is proposed, investigate whether there are homes available in the area where your client currently lives that fit both the client's preferences, and the client's needs.
- i Consider a pre-placement visit, which allows your client to spend time with the prospective caregiver in the home.<sup>17</sup> Gay, lesbian, bisexual, transgender, queer and questioning (GLBTQ) youth may have additional questions about whether they will be welcome at a proposed placement, and a pre-placement visit may help to answer these questions.<sup>18</sup>

## Conclusion

As an attorney for a youth in an out-of-home placement, you can counsel your client about what his or her placement options are. With the permission of your client, you can educate the court about what the client wants and how particular placements look like through the eyes of your client. Youth in care are resourceful and resilient, but support from an attorney in the form of placement advocacy is important to their empowerment.

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<sup>15</sup> For a youth in long-term foster care, where the youth generally has one in-court review hearing every 12 months, it may be necessary to ask for an additional hearing where this motion will be heard.

<sup>16</sup> Minn. Stat. §260C.193, subd. 3 (2010) (individualized determination of needs).

<sup>17</sup> For more on placement stability, see Lori D. Semke. *The Child Attorney's Role in Promoting Placement Stability*. CW360 Promoting Placement Stability Spring 2010 pp. 33.

<sup>18</sup> See Mimi Laver and Andrea Khoury, *Opening Doors for LGBTQ Youth in Foster Care: A Guide for Lawyers and Judges*. (2008) American Bar Association's Center on Children and the Law.

[http://www.americanbar.org/groups/child\\_law/projects\\_initiatives/openingdoors.html](http://www.americanbar.org/groups/child_law/projects_initiatives/openingdoors.html) (last visited May 11, 2011).