



# REPRESENTING OLDER YOUTH

Natalie J. Sal, Esq.  
Sal Sellaro Culpepper Legal Group  
430 Spruce Street, Suite 3  
Morgantown, WV 26505  
304-599-5291  
Natalie.J.Sal@gmail.com

# OLDER YOUTH IN CARE IN WV

# OLDER YOUTH IN CARE

In 2018\*:

- 2,736 (29%) of West Virginia's foster care population was age 14 or older
- 8% of youth in foster care "aged out" of the system
- 33% of youth in foster care had 3 or more placements during their most recent episode

\*Annie E. Casey Foundation, Fostering Youth Transitions, 2018 WV Profile Transition-Age Youth in Foster Care

# GUARDIAN AD LITEM'S ROLE

# GUARDIAN AD LITEM'S ROLE

- The GAL in a child abuse and neglect case has a **dual role**, both as an **attorney for the child**, and to **represent the best interests of the child**.
- A GAL has broad discretion in determining what is necessary to protect the best interests of a child. **The safety, well-being, and timely permanent placement of a child in an abuse and neglect proceeding are central to all aspects of a GAL's representation.**

# GUARDIAN AD LITEM'S ROLE

- A child has a **right to be represented by counsel** in every stage of abuse and neglect proceedings (including appeal).  
WV Code Code 49-4-601(f)(1)
- A *Guardian ad Litem* shall provide **competent representation** to a client, and to act with **reasonable diligence and promptness** in representing the child.
- A *Guardian ad Litem* shall make a **full and independent investigation** of the facts involved in the proceeding, and shall make his or her **recommendations** known to the court.

# GUARDIAN AD LITEM'S ROLE REPRESENTING OLDER YOUTH

The GAL's **duties do not change** when representing older youth, but:

- The **manner** in which the GAL accomplishes those duties may be different when dealing with older children than when dealing with younger children
- An **older youth's wishes** (especially regarding permanency) must be given much **greater weight** than the wishes of a younger child

# COMMUNICATING WITH OLDER YOUTH

“Doesn’t anyone talk in person anymore??”

# HOW TO COMMUNICATE

- Face-to-face / in person
  - School / School counselor's office
  - Home / Foster Home
  - Counselor's office
- Phone
- Text
- Skype / Facetime
- Social Media is NOT a great choice (security / confidentiality!), but can be used for a simple "Hey, call me!" message
- However you can manage it - be available!

# WHAT TO COMMUNICATE

- **WHO:**
  - Who you are / what a GAL does / **how to reach you**
  - Who are the other people involved in the case and what are their roles
  - Who they may expect to talk with (case workers, CASA, therapists, etc.)
- **WHEN:**
  - As soon as possible after you get the case
  - Before and after every hearing and MDT
  - Before you release your GAL report
  - As often as you can while you represent the child - it's good to just check in with them, even if you don't have specific news or questions

# WHAT TO COMMUNICATE

## WHAT:

- Their right to confidentiality and the limits on that right
  - A GAL must break confidentiality when doing otherwise places the child at a high risk of probable harm -- In re: Christina W., 219 W.Va. 678 (2006).
- What kind of case it is / how and why they are involved / how their needs and wishes can be made known
- Their legal rights
- Proceedings
  - Kinds of hearings and what kinds of decisions might a judge make in those types of hearing
  - What are MDT meetings and what might they accomplish

# WHAT TO COMMUNICATE

## WHAT:

- Visitation issues / decisions
- Permanency recommendations
- Transition planning options (when appropriate)
- Appeal rights / recommendations
- Anything and everything pertinent about their case that is age appropriate, will help them understand the case, and will help them make good decisions about what they may want or need

# WHAT TO COMMUNICATE

- **DO use your discretion** about the information you provide to your older your client. Even an older youth does not necessarily need to know sensitive factual details or other information that could be harmful for them to hear.
- **DO use therapists and service providers** to help communicate necessary sensitive information or to help convey difficult news to the youth.
- **DO NOT** use your communications with an older youth to go on a fact-finding fishing expedition. **DO** be open to anything that the youth may share with you.
- **DO** get to know your client, and let them know you are interested in them and their wellbeing.

# INVOLVING OLDER YOUTH IN DECISION MAKING

# PLACEMENT

- Ask about family members / close family friends who may be **possible placements**
- Ask how they feel about their current placement
- Build a **trusting relationship** so the youth will share problems or concerns with placements
- Discuss how the older youth's **placement preferences** or requests will be communicated to the Court for consideration
- Give the youth **realistic expectations** about placements (where, how long, etc.)
- Answer any questions about placement (to the extent you can)

# VISITATION

- Explain how visitation decisions are made and how the youth's wishes can be communicated to the Court
- **Ask** with whom the youth would like to visit
- **Ask** whether there is anyone the youth does not wish to visit at that time
- **Ask** if the youth has any requests about where to visit (when the option exists)
- Observe some visitations - nonverbal cues can be very important in making recommendations
- **Discuss visitation periodically** with the youth - often, visitation preferences of a youth change over the course of the case

# MDTs

- **Explain:**
  - What MDTs are
  - MDT purposes and goals
  - Who attends MDTs and their roles
  - How MDTs are conducted - what happens
  - Confidentiality requirements of MDTs
- **Update** the youth on recent MDTs in an age-appropriate manner
- Provide **notice** of the date/time of upcoming MDTs
- **Communicate** with the youth prior to / after each MDT

# MDTs

## Older youth's attendance at MDTs:

- Do they wish to attend (some youth do, others do not)?
- **Consider the age, maturity level, and emotional state** of the youth (including response to seeing their parents in sensitive cases)
- Consider the information anticipated to be discussed at the MDT
- Consult with a therapist before coordinating a youth's attendance at an MDT when appropriate

# MDTs

- Consider bifurcating the MDT so that the youth can participate but will not be exposed to potentially harmful or inappropriate information
- If appropriate for the older youth to participate:
  - Prepare him/her for the meeting and help them communicate effectively with the group
  - Help the youth to overcome barriers to participation (transportation / timing)

# HEARINGS

## Older youth's attendance at Hearings:

- Do they wish to attend (some youth do, others do not)?
- Consider the **age, maturity level, and emotional state** of the youth (including response to seeing their parents in sensitive cases)
- Consider the type of hearing and what the youth is likely to observe.
  - A status review hearing can be a positive experience under the right circumstances, whereas most youth should not be in attendance for significant evidentiary hearings
  - If an older youth wants to provide significant information to the Court on the record, that should be addressed with a request for an *in camera* proceeding consistent with the Rules and upon recommendation by the youth's therapist.

# HEARINGS

## Older youth's attendance at Hearings:

- **Consider bifurcating** the hearing so that the youth can participate to a limited extent (consistent with what they wish - sometimes they just want to see what happens or give the Court an update on how they are doing), but will not be exposed to potentially harmful or inappropriate information
- Consult with a therapist before coordinating a youth's attendance at hearings when appropriate
- Alert the Court ahead of time of the youth's desire or intent to attend
- If appropriate for the older youth to participate:
  - Prepare him/her for the hearing and help them communicate effectively with the court
  - Help the youth to overcome barriers to participation (transportation / timing)

PERMANENCY

# PERMANENCY

- As provided in Rule 52(g) of the Rules of Procedure for Child Abuse and Neglect Proceedings, a GAL's representation of the child continues until such time as permanent placement of the child has been achieved, or as determined by the Court.
- During the period of representation, evaluate whether it is appropriate to file a motion for modification of the dispositional order if a change in circumstances occurs for the child which warrants a modification.

# PERMANENCY

Children age 14 and older have a substantial say in whether a court should terminate parental rights of their parent(s):

§ 49-4-604(b)(6)(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights.

# TRANSITION PLANNING

- Some older youth will not achieve permanency by reunification or other permanent placement, and will reach age 18 while still in foster care. As GAL, you (and the MDT) have a duty to assist with transition planning for the youth in care.
- Older foster care youth in transition at higher risk for:
  - Teen parenthood
  - Adult incarceration
  - Homelessness
  - Unemployment
  - Failure to graduate high school
- Transition planning should be considered part of a concurrent plan for older youth in foster care.

# TRANSITION PLANNING

- The goal of transition planning is to ensure that the resources and services necessary to assist young people in making a smooth transition to adulthood are available based on their individual needs and goals.
- Transition planning should start early (age 16 or earlier) and MUST include the youth
- Programs like MODIFY\* can help provide older youth who will “age out” of foster care assistance with education (including college and vocational training financial assistance), training, financial support, and other needed transitioning services.
- Transition planning is a process, not an event. Start early - Develop a plan.

\*<http://modify.cedwvu.org>

Thank you for all that you do!