



Child & Family Services Reviews, Part IV: Foster Parents Do Not Receive Notice; Denied Opportunity to Be Heard

by Bill Grimm

This article is the fourth in a series analyzing the federal Child and Family Services Reviews.¹ Previous articles examined the findings related to placement stability, sibling contact,² and foster parent training.³

Affording those who care for foster children the opportunity to participate in hearings concerning the child placed in their home is an explicit federal mandate, one that includes foster parents, pre-adoptive parents, and relatives caring for foster children. Congress enacted these provisions, termed notice and opportunity to be heard rights for caregivers, as part of the Adoption and Safe Families Act (ASFA) of 1997.⁴ ASFA also required that “the child’s health and safety shall be the paramount concern.”⁵ It established that the child’s safety, need for permanency, and well-being were to be the focus in all case plans, hearings, and

reviews.⁶ In enacting the notice and opportunity provision, Congress recognized that courts and agencies could not make fully informed decisions about the child’s well-being without hearing from the child’s current caregiver.

The notice and opportunity requirements are among the criteria used to assess state child welfare programs in the Federal Child and Family Services Reviews (CFSTRs).⁷ Results from these reviews indicate many foster parents do not receive notice, and those who do are frequently excluded from hearings. When notice is provided, it is often untimely and inadequate. In many states, foster parents reported that they are discouraged from attending hearings, and that when they do go to court, they are often unwelcome. Few of the final reports suggest that reviewers elicited much information on why states were failing to implement this requirement.

Following passage of ASFA, most states enacted bills implementing the notice and opportunity mandate.⁸ Some state statutes mirror the language of the federal law⁹, while others clarify issues left unresolved by the federal statute and regulations, or expand the rights of foster caregivers beyond those required by federal law.¹⁰ Kansas appears to be the only state requiring foster parents to participate in the process, through submission of six-month progress reports.¹¹

Seven years after enactment of ASFA, few agencies or the courts have much data on this mandate.¹² Most final reports of the Child and Family Services Reviews suggest that stakeholder comments were the primary source of information used to assess states’ compliance with the federal law. Oftentimes, persons at one site disagreed with informants at the other sites.¹³ Few on-site case reviews reported evidence that agencies met this requirement.¹⁴

¹ The U.S. Dep’t of Health & Human Servs. (HHS) was mandated by Congress in 1994 to promulgate regulations for the review of state child welfare programs. 42 U.S.C. §1320a-2a. These reviews were to determine whether states were in “substantial conformity” with the federal child welfare mandates in Titles IV-B and IV-E of the Social Security Act. HHS, the federal agency charged with ensuring compliance with the federal mandates attached to the billions of federal child welfare dollars, began a series of Child and Family Services Reviews in 2001. All the on-site reviews have been completed, but several final reports have not been released.

² Bill Grimm & Isabelle Hurtubise, *Child and Family Services Reviews: An Ongoing Series, Part II: An Examination of Placement and Visitation*, Youth Law News, January-March 2003, at 14-30.

³ Bill Grimm, *Child & Family Services Reviews: Part III in a Series, Foster Parent Training: What the CFS Reviews Do and Don’t Tell Us*, Youth Law News, April-June 2003, www.youthlaw.org/downloads/BillGrimm_Reprint2.pdf.

⁴ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89 § 104 (codified at 42 U.S.C. § 675 (5)(G) (2000 & Supp. I 2002)).

⁵ 42 U.S.C. § 671(a)(15)(A).

⁶ Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Program Instruction ACYF-PF-CB-98-02* (Jan. 8, 1998).

⁷ 45 C.F.R. § 1355.34 (c)(2)(v) (2003).

⁸ A state by state search is available at the National Clearinghouse on Child Abuse and Neglect Web site, <http://nccan.ch.acf.hhs.gov/general/legal/statutes/sag/allsearch.cfm> (last visited May 18, 2004).

⁹ E.g., Minn. Stat. § 260C.152 (5) (2003); Neb. Rev. Stat. § 43-1314 (2003).

¹⁰ E.g., Alaska Stat. § 47.10.030 (b)-.070 (2004) (“[T]he court may limit the presence of the foster parent or other out-of-home care provider ... to the time during which the person’s testimony is being given if it is (1) in the best interest of the child; or (2) necessary to protect the privacy interests of the parties and will not be detrimental to the child”); Cal. Welf. & Inst. Code § 293 (f) (2004) (“[N]otice shall indicate that the [foster parent] may attend all hearings or may submit any information he or she deems relevant to the court in writing.”); Me. Rev. Stat. Ann. tit. 22 § 4038, 4053 (2003) (“The right to be heard includes only the right to testify and does not include the right to pres-

ent other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records”).

¹¹ Kan. Stat. Ann. § 38-1565 (2003) (“If the child is placed in foster care, the foster parent or parents shall submit to the court, at least every six months, a report in regard to the child’s adjustment, progress and condition.”).

¹² Maine is one of few states to monitor compliance with state policy. Between April and November 2002, its Quality Assurance Unit found that compliance varied from 42 percent to 86 percent. Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Maine Child and Family Services Review 50* (2003) [hereinafter *Maine Final Report*].

¹³ See, e.g., Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Hawaii Child and Family Services Review 65* (2003) [hereinafter *Hawaii Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Louisiana Child and Family Services Review 66* (2004) [hereinafter *Louisiana Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Michigan Child and Family Services Review 71* (2002) [here-

inafter *Michigan Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Nebraska Child and Family Services Review 61* (2002) [hereinafter *Nebraska Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: West Virginia Child and Family Services Review 66-67* (2002) [hereinafter *West Virginia Final Report*].

¹⁴ But see Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Pennsylvania Child and Family Services Review 68* (2002) [hereinafter *Pennsylvania Final Report*] (“[S]ome of the cases reviewed contained documentation such as letters and notices that were sent to the foster parents or the record contained statements that verbal notification was provided and this later confirmed with the parents through interviews.”); Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Massachusetts Child and Family Services Review 35* (2001) [hereinafter *Massachusetts Final Report*] (Reviewers’ conclusion that this was an area of strength was “primarily because in case-specific interviews, the majority of foster parents reported that they were invited to Foster Care Reviews and Permanency Hearings.”).

Despite having little reliable information on which to base their findings of compliance, federal reviewers in each state determined if the notice and opportunity requirements were an area of “Strength” or an area “Needing Improvement.”

Table I (*see page 34*) shows the official findings from the 46 final reports available. In 25 states, the provision of notice and opportunity was rated a strength. In 20 states and Puerto Rico, the provision was rated an area needing improvement.

In our analysis, the state program findings have been adjusted to come up with a revised table of compliance. A higher standard than applied by some of the federal reviewers has been used, requiring evidence of consistent implementation of both the notice and opportunity policies in order to rate this program area as a strength. This approach is consistent with the *Procedures Manual*¹⁵ requirement that review teams determine whether the state has a policy in line with federal law, and whether the policy is actually being implemented.

Case Review Systems

Providing foster parents with notice and opportunity is one of five factors to determine the adequacy of states’ child welfare case review systems. The other criteria are:

- A written case plan for each child in foster care, which is developed jointly with the parents, and includes all federally required provisions;¹⁶
- Periodic review of the status of each child in foster care, at least once every six months, by the court or an administrative agency;¹⁷

- A permanency hearing for each child in foster care, no later than 12 months from the child’s entry into foster care, by the court or an administrative body;¹⁸
- Procedures for initiating termination of parental rights proceedings, after a child has been in foster care for 15 months.¹⁹

Most of these requirements – case plan, periodic reviews and permanency hearings – predate ASFA. Although the case plan and permanency hearing mandates have been part of federal law for more than two decades, 39 states, or 87 percent, were out of compliance on the case plan provision, and 20 states, or 44 percent, do not hold permanency hearings as federally mandated. States performed much better on the periodic review requirement: only four, or 8 percent, failed to comply.

Our analysis looks at data on notice and opportunity from various final reports. If a statewide assessment was readily available, relevant sections of that assessment were included. States for which this was an area needing improvement are required to include provisions addressing it in their Program Improvement Plan (PIP). Excerpts from some of those PIPs are listed. Further analyses of other case review system findings will be published in the future.

Federal Reviews Confirm Earlier Reports

Federal reviewers concluded that many states fail to involve foster parents in the decision-making process, and these findings echo earlier information on implementation of the federal law. For example,

three years after enactment of ASFA, an appellate court in Louisiana reversed the decision of a juvenile court judge who had denied the child’s foster parents the right to be present at the review hearing and to be heard regarding the permanent placement of the child.²⁰

In July 2000, the Connecticut Office of Legislative Research identified lack of foster parent participation in court as a problem in the state’s child welfare system.²¹ In March 2001, the Oklahoma Governor’s Task Force on Children in Custody found that “some judges in Oklahoma will not allow foster parents to attend or be heard at hearings.”²²

Focus groups of foster parents in Alameda County, California, reported that they “were very disappointed that their input about children’s needs and progress was seldom solicited by the county or the courts.”²³ They also complained that “(caseworkers) don’t return our calls or let us know about court hearings even though that’s where major decisions are made.”²⁴

Inconsistent Standard of Conformity

Statements in some final reports suggest that federal reviewers judged states to be in compliance if there was a state law or policy requiring the provision of notice, and allowing some participation in case reviews.²⁵ Montana’s system, for example, received a strength rating in this area “because the State has a requirement in statute and a process in place....”²⁶

Some reviewers appear to apply a higher standard, requiring evidence of consistent implementation of the policy.²⁷ Reviewers in Wisconsin, for example, noted that the Children’s Code requires that any physical cus-

¹⁵ Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Child and Family Services Review Procedures Manual* 50 (August 2000).

¹⁶ 42 U.S.C. §§ 671 (a)(16), 675 (1).

¹⁷ 42 U.S.C. §§ 671 (a)(16), 675 (5)(B).

¹⁸ 42 U.S.C. §§ 671 (a)(16), 675 (5)(C).

¹⁹ 42 U.S.C. §§ 671 (a)(16), 675 (5)(E).

²⁰ *In the Interest of K.A.M.*, 763 So. 2d 695 (La. Ct. App. 2000).

²¹ Saul Spigel, Chief Analyst, *OLR Research Report 2000-R-0693* (July 12, 2000).

²² Letter from Buddy Faye Foster, Chair of the Governor’s Task Force on Children in Custody, to Oklahoma Foster Parents. (Distributed at Fifth Annual Training Conference of the Foster Care Association of Oklahoma Mar. 30-31, 2001) (on file with author).

²³ Pamela Choice, Kirsten Deichert, Heather Montgomery, & Michael Austin, *Factors Influencing Foster Parents’ Decisions to Continue or Cease Foster Parenting* 50 (Bay Area Social Services Consortium Center for Social Services Research) (June 2000).

²⁴ *Id.* at 47.

²⁵ *E.g.*, Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Alabama Child and Family Services Review*

62 (2002) [hereinafter *Alabama Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: California Child and Family Services Review* 65 (2003) [hereinafter *California Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Colorado Child and Family Services Review* 55 (2002) [hereinafter *Colorado Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Montana Child and Family Services Review* 62 (2002) [hereinafter *Montana Final Report*].

²⁶ *Montana Final Report* at 62.

²⁷ *E.g.* Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Alaska Child and Family Services Review* 63 (2002) [hereinafter *Alaska Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Connecticut Child and Family Services Review* 61 (2002) [hereinafter *Connecticut Final Report*]; *Maine Final Report* at 50; *Michigan Final Report* at 70; *West Virginia Final Report* at 66; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Wisconsin Child and Family Services Review* 66 (2004) [hereinafter *Wisconsin Final Report*].

todian of a child in foster care receive 10 days advance notice of hearings, and be given an opportunity to be heard.²⁸ Nevertheless, they concluded that this was an area needing improvement “because the CFSR determined that the process for notifying foster parents ... about reviews and hearings is not being implemented in a timely or consistent manner throughout the State.”²⁹

Some reviewers appear to have discounted reports of non-compliance with little or no explanation. Stakeholders in two of the three local sites visited by federal reviewers in Montana “indicated that foster parents do not always get notice of court hearings.”³⁰ Stakeholders interviewed in Montana also told reviewers “the county attorney does not provide notification of judicial hearings due to confidentiality concerns.”³¹

Case record reviews in Arizona indicated that foster parents were notified of court and citizen review board hearings, but foster parents reported a limited opportunity to be heard.³² Reviewers in New Hampshire found that “the consistency and timeliness of the notification appears to vary across the sites included in the CFSR onsite review”³³, and stakeholders reported “some judges do not believe that foster parents should be given the opportunity to be heard.”³⁴ Despite these reports from stakeholders, the two states were found to be in conformity with ASFA.

Surveys, Focus Groups, and Stakeholder Comments

Several states conducted surveys of foster parents on this issue as part of their statewide assessment.³⁵ In Maine, for example, only 50 percent of foster parents reported that they were notified of court hearings, and 10 percent indicated that there has been an improvement in the area of notification.³⁶ A mail survey of Michigan foster parents found that 66 percent reported being notified of court hearings.³⁷

In 2001, the Center for the Study of Social Policy surveyed foster parents in Arkansas.³⁸ Seventy-two percent of foster parents responding indicated that they had attended a court hearing for a child placed in their home.³⁹ However, of those who attended court hearings, 35 percent indicated they never are asked to speak in court, and another 46 percent indicated they sometimes are asked to speak in court.⁴⁰

Our analysis does not evaluate whether a sufficient number of responses were gathered in these surveys to consider them representative of foster parents in general.⁴¹ Neither, it appears, did the federal reviewers.

Kentucky’s Cabinet of Human Resources conducted a census of all foster homes.⁴² The census found that 69 percent of foster parents receive consistent notification of case conferences, and more than 60 percent are invited consistently to court hearings. Approximately 12 percent

reported that they had never been invited to a court hearing, and 12 percent reported that they had never been invited to a case conference.

Federal regulations require that the statewide self-assessment and the on-site review help assess a state’s performance on systemic factors, including the case review system.⁴³ The on-site review consists of both a review of individual cases⁴⁴, and interviews with stakeholders. Federal reviewers appear to rely primarily on the comments of stakeholders for their compliance determinations in this area. Two groups of stakeholders, state and local, must be interviewed.⁴⁵

State stakeholders include the child welfare director, court system representatives, major tribal representatives, and administrative review bodies. Local stakeholders include foster parents, juvenile court judges, law enforcement officers, social workers and administrators from the local child welfare agency, and guardians ad litem.

To assist reviewers with their evaluation of systemic issues,⁴⁶ the Children’s Bureau of the U.S. Department of Health & Human Services (HHS) publishes a *Stakeholder Interview Guide*. Since the federal reviews began in 2001, this guide has been revised several times. In the first version, the only guidance to interviewers was in the form of a suggested “Exploratory Issue”:⁴⁷

²⁸ *Wisconsin Final Report* at 66.

²⁹ *Id.*

³⁰ *Montana Final Report* at 63.

³¹ *Id.* The state’s self-assessment noted that “caregivers may not be receiving notice of court hearing and when they do, they may not be allowed to attend the hearing or to participate in it.”

³² Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Arizona Child and Family Services Review 49* (2002) [hereinafter *Arizona Final Report*].

³³ Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: New Hampshire Child and Family Services Final Report 61* (2003) [hereinafter *New Hampshire Final Report*].

³⁴ *Id.* at 62.

³⁵ Prior to the federal on-site review, states are required to conduct a self-assessment. See, e.g., *Alabama Final Report* at 62; *Hawaii Final Report* at 65; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Idaho Child and Family Services Review 58* (2003) [hereinafter *Idaho Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Iowa Child and Family Services Review 61* (2003) [hereinafter *Iowa Final Report*]; *Maine Final Report* at 50; *Michigan Final Report* at 70 (2002).

³⁶ *Maine Final Report* at 50.

³⁷ *Michigan Final Report* at 70.

³⁸ Center for the Study of Social Policy, *Arkansas Foster Parent Survey Analysis 15-16* (2002).

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 16.

⁴¹ E.g., Hawaii, State of Hawaii Dep’t of Human Resources Social Services Division, *Hawaii Child Welfare Services Statewide Assessment Report for the Federal Child and Family Services Review (CFSR)*, 18 (2003) (“The surveys were distributed at the September 2002 foster parents conference and mailed to 280 randomly selected caregivers; 66 surveys were returned – 51 foster parents, 9 adoptive parents, and 6 “other”). In SFY 2001, DHR reports there were 1,528 foster homes in Hawaii, including 643 “child specific licensed relative homes”, at 42.

⁴² *Kentucky Foster Care Census – Phase II Executive Summary – Adults* (January 16, 2004), <http://www.trc.edu.edu/fostercare> (last visited May 28, 2004).

⁴³ 45 C.F.R. § 1355.34 (c).

⁴⁴ The review of individual cases includes the case file and interviews with persons associated with the case – child, parents, foster parents, relatives, caseworker.

⁴⁵ 45 C.F.R. § 1355.33 (c)(4)(iv); Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Child and Family Services Reviews Procedures Manual 32-36* (2000).

⁴⁶ The seven systemic issues covered in the CFS Reviews are statewide information system, case review system, quality assurance system, staff and foster caregiver training, service array, agency responsiveness to the community, a and foster and adoptive parent licensing, recruitment, and retention. 45 C.F.R. § 1355.34 (c) (1) – (7).

⁴⁷ U.S. Dep’t of Health & Human Services, Children’s Bureau, *Child and Family Services Reviews Stakeholder Interview Guide* at 11 (2001).

What is the level of participation by children, families, foster families, and pre-adoptive families in hearings, including provisions for notifying them of reviews and hearings, changes in placements, and visiting arrangements?⁴⁸

In February 2002, the new edition of *Stakeholder Interview Guide* revised both the core question and exploratory issues.⁴⁹ Interviewers were instructed to ask not only if foster parents participated in reviews, but also how they were notified of these reviews, and if they were encouraged to participate.⁵⁰

Perhaps more important than the addition of new questions in the Guide was the revision of instructions. The new instructions said that information used to evaluate the agency's performance should reflect only the input of stakeholders with firsthand, well-founded knowledge of the issue. The instructions also stated that some stakeholders may offer second-hand information, or express opinions that are not supported by facts or experience; such information should not be recorded on the interview guide.

A year later, the guide was revised again.⁵¹ It was expanded from 16 pages to 95 pages, and included a separate section on foster parent notice, opportunity to be heard and participation.⁵²

Details on stakeholders consulted by federal reviewers are difficult to ascertain. In many cases, it is impossible to determine from final reports how many stakeholders commented on an issue, how many were foster parents, and how many were agency employees. Some reports rely upon "some stakeholders," or characterize stakeholders as "generally agreed"

that foster parents are provided with advance notice of all hearings. Other reports differentiate between "county stakeholders" comments, and those of state stakeholders.⁵³

A few of the final reports indicate that persons interviewed as part of the on-site individual case reviews provided the basis for the findings. Massachusetts' report states that "in case-specific interviews, the majority of foster parents reported that they were invited to Foster Care Reviews and Permanency Hearings."⁵⁴

Conflicting Information

Different sources often provide conflicting information. In many final reports, there are significant differences among what is reported in the statewide assessments, case reviews, and stakeholder comments. In Iowa, for example, the 2000 Foster Family Satisfaction Study found that foster parents are not consistently receiving adequate notice of hearings and reviews across the state, and are not receiving a copy of the court order that indicates their responsibilities.⁵⁵ However, in a focus group of foster parents held in late 2002, many foster parents said that they are included in the hearing notice distribution and that they are able to provide information and feedback to the court.⁵⁶

Oklahoma's statewide assessment reported "94% of external stakeholders interviewed ... expressed the opinion that the notification process is adequate."⁵⁷ However, the final report noted that "twelve sites across the State have indicated that both the notification process and the opportunity to be heard in the Court are not occurring."⁵⁸

According to an Alabama survey:

Ninety percent of foster and adoptive parents who responded indicated that they were notified of court hearings regarding a child in their care; 73 percent said that there was a method in place to incorporate their input into decisions or recommendations, and 66 percent indicated that special efforts were made to engage them in the process through training or written materials about their role. In addition, 66 percent of the respondents indicated that they had participated in a court hearing for a child in their home.⁵⁹

But some Alabama stakeholders told reviewers "there are many times when notifications are not received."⁶⁰ In two of the three counties included in the on-site review, stakeholders said that "the judge in that county does not allow foster parents to attend or participate in court hearings," and "foster parents do not receive written notice of the hearings."⁶¹

Indiana's statewide assessment found that more than one third of foster parents do not receive timely notice.⁶² An undisclosed number of stakeholders, however, reported that notification was given to foster parents to attend court hearings via certified mail.⁶³

Similarly, Illinois' statewide assessment attributed poor attendance of foster parents at reviews to a number of factors, including inconsistent notification of hearings, and judges' refusal to allow foster parents to participate in court hearings. Stakeholders in Cook County, which includes Chicago, confirmed that the opportunity to be heard varies from

48 *Id.*

49 U.S. Dep't of Health & Human Services, Children's Bureau, *Child and Family Services Reviews Stakeholder Interview Guide* at 9 (Feb. 2002).

50 *Id.*

51 *Id.* at 2. Instructions accompanying this Guide suggested, as had the previous two editions, that interviews be limited to approximately one hour.

52 *Id.*

53 See e.g., Children's Bureau, U.S. Dep't of Health & Human Servs., *Final Report: South Carolina Child and Family Services Review* 64 (2003) [hereinafter *South Carolina Final Report*].

54 *Massachusetts Final Report* at 35. Massachusetts officials also pointed out that in "FFY 99 2,248 foster/pre-adoptive parents and 315 relative caregivers attended Foster Care Reviews." But "some stakeholders noted that the participation rate ... foster parents was low."

55 *Iowa Final Report* at 61 (2003).

56 *Id.*

57 Children's Bureau, U.S. Dep't of Health & Human Servs., *Final Report: Oklahoma Child and Family Services Review* 63 (2002) [hereinafter *Oklahoma Final Report*].

58 *Id.*

59 *Alabama Final Report* at 62.

60 *Id.* at 63.

61 *Id.*

62 Children's Bureau, U.S. Dep't of Health & Human Servs., *Final Report: Indiana Child and Family Services Review* 41 (2002) [hereinafter *Indiana Final Report*].

63 *Id.* See also Children's Bureau, U.S. Dep't of Health & Human Servs., *Final Report: Kansas Child and Family Services Review* 48-49 (2001) [hereinafter *Kansas Final Report*] (Data system shows 48 percent compliance but "Kansas is confident that interested individuals are invited and given an opportunity to attend case planning conferences and reviews and provide input" on basis that "stakeholder interviews and case reviews revealed that foster parents are invited to hearings.").

judge to judge. However, since “most stakeholders” were of the opinion that foster parents receive notification, this was identified as a strength area.

Federal reviewers do not explain how they balanced the conflicting information from stakeholders, surveys, focus groups, and the state’s self-assessments.

Foster Parents Discouraged From Attending

In many states, foster parents are infrequent participants in hearings. The CFS Reviews provide some explanations for this. Foster parents in many states reported that they were not encouraged to attend court hearings, or that caseworkers discouraged their attendance and participation. This complaint appeared again and again throughout the reviews.⁶⁴ Occasionally, foster parents reported the court also discouraged them from participating.⁶⁵

Foster parents who leave court feeling that the judge does not value their participation are unlikely to return. Both the court’s actions and attitudes can discourage caregivers. A stakeholder in Texas told federal reviewers that “the judge asks if the foster parents have anything to say after the decisions had already been made.”⁶⁶ Another stakeholder in Texas reported that “the judge views foster parents as responsible for supervising the children in the courtroom, rather than as individuals who can testify in the case.”⁶⁷ Foster parents in Kansas reported feeling that

their input is not valued.⁶⁸ Notices sent by the court to foster parents in North Dakota inform them that they “do not have the right to speak.”

Many foster parents in North Dakota report they have experienced situations in which they have attended hearings but have not been allowed to participate.⁶⁹ Some foster parents perceive reviews as “meaningless” and “a waste of time,” because they are so brief.⁷⁰ Stakeholders also reported that some foster parents are intimidated by the court setting.⁷¹ Scheduling reviews and hearings during working hours and the unavailability of day care were also reported as obstacles to foster parents’ participation.⁷²

Relative Caregivers

Relatives caring for children in foster care are listed as a separate category of caregivers under ASFA. Relatives who are not licensed foster parents, as well as those who are approved foster families, are to be involved in all hearings concerning children placed in their homes. Few reports, however, distinguish between foster parents and relative caregivers. Utah, for example, told federal reviewers that “(k)inship care providers are usually given notice as a courtesy” but later noted that “(c)hildren placed with unlicensed relative caregivers are not reviewed by (citizen review boards).”⁷³ Several reports note that Native American caregivers or tribes are not notified consistently, or receive notice too late to participate.⁷⁴ In Wisconsin, for

example, stakeholders reported that tribes receive notice “by phone or fax at the last minute.”⁷⁵

Private Agency Foster Parents

Many public child welfare agencies purchase foster care services from private child-placing agencies. Though such agencies make up a substantial portion of foster parents in some states, few of the federal reviews looked specifically at this population of foster parents. Tennessee officials admitted in their statewide assessment “that the task of communicating these rights to contract foster parents is complex because DCS caseworkers do not have a direct relationship with them.”⁷⁶

Timeliness and Responsibility for Providing Notice

ASFA does not provide specifics of hearing notification for foster caregivers. Federal regulations only require that the notice be timely.⁷⁷ They do not specify a minimum number of days advance notice, nor is there an explicit requirement that the notice be in writing. As a result, a hodgepodge of procedures has arisen.

The definition of “timely notice” varies from one state to the next. Hawaii requires 48 hours’ notice; Oklahoma, 7 days; Tennessee and Wisconsin, 10 days; Massachusetts, 14 days; and Pennsylvania, 15 days.⁷⁸ It is not surprising that foster parents complain that they are not given sufficient time to make arrangements to attend hearings.⁷⁹

⁶⁴ See, e.g., *Alabama Final Report* at 63; *California Final Report* at 66; *Colorado Final Report* at 56; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Delaware Child and Family Services Review 56* (2001) [hereinafter *Delaware Final Report*]; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Florida Child and Family Services Review 51* (2001) [hereinafter *Florida Final Report*]; *Idaho Final Report* at 58; *Iowa Final Report* at 62; *Maine Final Report* at 51; *Michigan Final Report* at 70-71; *South Carolina Final Report* at 64; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Texas Child and Family Services Review 56* (2002) [hereinafter *Texas Final Report*].

⁶⁵ *Connecticut Final Report* at 61.

⁶⁶ *Texas Final Report* at 56.

⁶⁷ *Id.*

⁶⁸ *Kansas Final Report* at 49.

⁶⁹ Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: North Dakota Child and Family Services Review 38* (2002).

⁷⁰ *Montana Final Report* at 63. Stakeholders elsewhere complained that reviews were “perfunctory.” *Michigan Final Report* at 67. See also Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Utah Child and Family Services Review 48* (2003) [hereinafter *Utah Final Report*] (“A few stakeholders expressed concern that the reviews were only “paper reviews,” that is, the court only looks at the reports and does not hear from the caseworker, child, foster parents, biological parents, or other key parties.”).

⁷¹ *Maine Final Report* at 51.

⁷² *California Final Report* at 66 (lack of child care an impediment to attending hearings). Federal policy provides that an administrative case/ judicial review is not an ordinary parental duty. Therefore, child care is an allowable expenditure under title IV-E foster care maintenance when the foster parent(s) attends administrative case/judicial reviews. Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Policy Interpretation Question ACYF-CB-PIQ-97-01* (Mar. 4, 1997).

⁷³ *Utah Final Report* at 50.

⁷⁴ *Alaska Final Report* at 64; *Maine Final Report* at 51; *Wisconsin Final Report* at 66. But see, *Arizona Final Report* at 49 (Stakeholder interviews and on-site case reviews indicated tribes, particularly the Navajo Nation, receive timely notice of ICWA children in care).

⁷⁵ *Wisconsin Final Report* at 66.

⁷⁶ Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Tennessee Child and Family Services Review 58* (2002) [hereinafter *Tennessee Final Report*].

⁷⁷ 45 C.F.R. 1356.21 (o) (2003).

⁷⁸ *Hawaii Final Report* at 64-65; *Oklahoma Final Report* at 63; *Tennessee Final Report* at 57; *Wisconsin Final Report* at 66; *Massachusetts Final Report* at 35; *Pennsylvania Final Report* at 68.

⁷⁹ *Alaska Final Report* at 64; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: Arkansas Child and Family Services Review 53* (2002); *Oklahoma Final Report* at 63.

The responsibility for providing notice of reviews also varies from state to state. It can be assigned to the courts, agency attorneys, or caseworkers.⁸⁰ Within the same state, there is often inconsistency in notice procedures.⁸¹

Opportunity to Be Heard Varies

There is wide disparity in how courts in different states – and even within the same state – interpret the opportunity to be heard provision. Much of this is due to the ambiguity in the federal statute. It does not specify that foster parents may “attend all hearings⁸².” Courts are familiar with the rights of parties, but the hybrid creation of the federal statute, in which caregivers have the right to receive notice and to be heard, but not to be a “party,” has little precedent. Since neither the statute nor the regulations provide any guidance for the courts, a patchwork of practices has developed.

For example, Kentucky stakeholders reported that caregivers’ ability to enter the court and participate in hearings varies by judge. In Connecticut, judges either do not let foster parents attend hearings or, if they are present, do not allow them to speak⁸³. Other judges allow parents to veto foster caregivers’ participation.⁸⁴ In some Delaware courts, foster parents are not allowed to attend the entire hearing, but are escorted in to speak, and then escorted out.⁸⁵ Idaho stakeholders reported that “in some courtrooms, the judge

will directly ask foster parents for their opinions, while in other courtrooms, foster parents are not permitted to speak.”⁸⁶

Some states permit foster parents to intervene in court proceedings, and expand their right beyond a mere opportunity to be heard. California law, while not granting all foster parents party status, recognizes a special category of foster caregivers – de facto parents.⁸⁷ To establish uniformity, and make it easier for caregivers to petition the court for de facto parent status, the state’s Judicial Council publishes an informational pamphlet, and offers online forms.⁸⁸ Foster parents in Texas who have cared for a child longer than 12 months are afforded legal standing.⁸⁹

Submitting Written Comments

In several jurisdictions, foster parents are permitted to submit a written report or letter, but with few exceptions, there is no clear process for foster parents to follow.⁹⁰ One notable exception is California, where the Administrative Office of the Courts has adopted a Caregiver Information Form that is available online.⁹¹

Citizen review boards in Nebraska mail out questionnaires to each foster parent prior to board reviews, soliciting updated information on children’s physical care, educational status, special needs, sibling and parental visits, and services provided to the foster parents.⁹² If a foster parent in New Mexico cannot attend

a review, he or she can fill out a comment sheet, which is included with the report to the judge.⁹³ Oklahoma’s foster parent association posts tips for preparing a court report on its Web site.⁹⁴

Foster Care Review Boards

Agency panels or citizen review boards conduct periodic case reviews in 23 states. Local review boards are comprised of citizens who volunteer their time to review the cases of children in foster care.⁹⁵ Federal law requires that agency panels must be open to participation of the biological parents and include at least one person who is not responsible for the case management or delivery of services to the child or parents.⁹⁶

In several states, a system for notifying foster parents of administrative or review board meetings exists, while a similar system for court reviews does not.⁹⁷ Notification of administrative reviews, usually the responsibility of the child welfare agency is identified by stakeholders as more consistent than notice by the court.

A survey conducted by the South Carolina State Foster Parent Association indicates that foster parents are receiving notification of the Foster Care Review Board (FCRB) reviews, and that the majority of those surveyed participated in the reviews.⁹⁸ A 2001 FCRB survey found that 36 percent of respondents rarely or never receive notice of court hearings.⁹⁹

⁸⁰ See, e.g., *Iowa Final Report* 61 (“Other stakeholders reported that the court is responsible and that notice is done by a letter.”); *Indiana Final Report* at 41 (DFC attorneys were responsible for providing the appropriate notice to foster parents, pre-adoptive parents, and relative caregivers); *Louisiana Final Report* at 66 (caseworkers).

⁸¹ See, e.g., *Georgia Final Report* at 41-42.

⁸² U.S. Dep’t of Health & Human Servs.’ response to comments on the proposed regulation also contributes to the confusion:

The requirement that States give foster parents, pre-adoptive parents and relative caregivers notice of and opportunity to be heard affords these

individuals with a right to provide input to these reviews and hearings. However, it does not confer a right to appear in person at the review or hearing. The requirement can be met as the State sees fit such as by notification to the individuals that they have an opportunity to attend the review or hearing and provide input, or notification that they can provide written input for consideration at the review or hearing.

⁶⁵ Fed. Reg. 4065 (Jan 25, 2000). The agency appears to have reached this conclusion because Congress declared that states are not required to make foster parents a party to the case. 42 U.S.C. § 675 (5)(G). This reads too much into the “party” exception. There is nothing in the legislative history to support HHS’ narrow view of “opportunity to be heard.”

⁸³ *Connecticut Final Report* at 61.

⁸⁴ *Id.*

⁸⁵ *Alaska Final Report* at 64; *Delaware Final Report* at 56; *Florida Final Report* at 51.

⁸⁶ *Idaho Final Report* at 58.

⁸⁷ Ca. Rules of Court, Rul. 1413(e).

⁸⁸ Caregiver Forms JV 295-99, <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi> (last visited May 19, 2004).

⁸⁹ *Texas Final Report* at 55.

⁹⁰ *Hawaii Final Report* at 65; *Idaho Final Report* 58; *New Hampshire Final Report* 61-62; *Massachusetts Final Report* 35; *Michigan Final Report* 70; Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Final Report: North Carolina Child and Family Services Review* 39 (2001).

⁹¹ Caregiver Information Form JV-290, <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi> (last visited May 19, 2004).

⁹² *Nebraska Final Report* 61.

⁹³ E-mail from Kesi Relyea, Research & Development Coordinator, New Mexico Child Abuse & Neglect Citizen Review Board, to Johanna Hartwig, National Center for Youth Law (May 20, 2004) (on file with author).

⁹⁴ “Prepare a Court Report” (Foster Care Association of Oklahoma), <http://www.fostercareok.com/resview.php?ID=25> (last visited May 17, 2004).

⁹⁵ Statement of Bill Stanton, President, National Association of Foster Care Reviewers, Phoenix, Arizona Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means (Jan. 28, 2004).

⁹⁶ 42 U.S.C. § 675 (6).

⁹⁷ *Utah Final Report* at 60-61; *West Virginia Final Report* at 66-67.

⁹⁸ *South Carolina Final Report* at 64 (2003).

⁹⁹ *Id.*

Data collected for Connecticut indicated that notice of treatment planning conferences and administrative case reviews was given to foster parents in more than 88 percent of all cases.¹⁰⁰ In Arizona, citizen review board staff calls foster parents to invite them to the review.¹⁰¹ Foster parents attending these reviews feel their input is solicited and valued, while the opposite is true of court hearings.¹⁰²

Attendance at Reviews and Hearings

Few states collect or report data on foster parents' rate of attendance at hearings and reviews. Utah's 2002 Court Improvement Project evaluation found that foster parents were recorded as being present in 35 of the 106 review hearings monitored¹⁰³, a 33 percent attendance rate, but the study did not determine how many of the absent foster parents had been invited, or whether those who did attend were given an opportunity to speak.

Some persons interviewed during the federal audits suggested that foster parents were more likely to attend administrative reviews, as they are less intimidating and formal than court hearings.¹⁰⁴ In at least one state, survey data suggests a disparity between notice and participation in citizen reviews and court hearings.

Additional data collected for this article suggests that use of a citizen review panel does not assure high rates of foster parent participation. For example, data for Miami-Dade

County, Florida, indicated that foster parents attended only 17 percent of the 1,433 reviews conducted from March through December of 2002.¹⁰⁵ Of the 2,560 reviews conducted by Michigan's Citizens' Foster Care Review Board Program during fiscal year 2000-01, foster caregivers attended 22 percent.¹⁰⁶ South Carolina's attendance negligibly improved during 2003: Foster parents attended 21.3 percent of 8,194 hearings in 2003 compared to 20.4 percent of 8,301 hearings in 2002.¹⁰⁷

There are many possible reasons for these low rates of attendance. Scheduling problems may be as much a problem for review boards as for the courts, since many boards meet during the workday.¹⁰⁸ Illinois has recognized that current scheduling may impede foster parent attendance and plans to undertake a needs assessment of scheduling flexibility and, if necessary, pilot after-hours reviews.¹⁰⁹ A further problem limiting attendance is that citizen review boards are dependent upon the agency to supply contact information for interested persons.¹¹⁰ The percentages of foster parents who receive notices and choose not to attend are unknown. However, a recent project undertaken by the Junior League in cooperation with the citizen review board in Miami-Dade County has shown that consistent notification can increase foster parent attendance. From March through December of 2003, the Junior League sent letters inviting foster parents to attend reviews, informing foster parents they could also participate by telephone or

in writing. Attendance by foster parents almost doubled during the project, increasing from the previous year's rate of 17 percent to 32 percent.¹¹¹

Illinois appears to have considerable success in getting foster parents to participate in its periodic reviews. Six-month reviews of foster children's cases in Illinois are conducted by a professional staff member from the Department of Children and Family Services, Division of Administrative Case Review (ACR). Written notices of the date, time, and place of the administrative case review are mailed to family members, foster parents, Guardians Ad Litem, and age-appropriate youth 21 days prior to the review. The same notification process is used for relatives caring for children in foster care whether they are licensed or not. For fiscal year 2003, 7,054, or 53 percent, of the 13,296 administrative panel reviews were attended by foster parents. In fiscal year 2002, foster parents participated in 8,376, or 56 percent, of 14,897 reviews.¹¹²

Program Improvement Plans

Each state needing improvement in the area of notice and opportunity must describe how it will strengthen its performance. Overall, the PIPs suggest that states saw this as an area of low priority, as they put little thought into addressing the issue, and the federal oversight of plans in this area is very poor. None of the PIPs reviewed here contain any numerical targets, e.g., increasing timely notice to caregivers to 70 percent of all caregivers by 2002, or improving foster parent attendance

¹⁰⁰ *Connecticut Final Report* at 61.

¹⁰¹ *Arizona Final Report* at 49.

¹⁰² *Id.*

¹⁰³ *Utah Final Report* at 50.

¹⁰⁴ E.g., *Idaho Final Report* at 59; *Montana Final Report* at 63. Agency staff in New Hampshire, however, reported that foster parents were more likely to attend court hearings than administrative reviews. This was explained, in part, by the frequency of court reviews - every 90 days. *New Hampshire Final Report* at 57.

¹⁰⁵ Email from Cristina Varga, IT Coordinator, Foster Care Review, Miami, Florida, to Johanna Hartwig, National Center for Youth Law (June 1, 2004) (on file with author).

¹⁰⁶ State of Michigan Citizen's Foster Care Review Board Program, 2001 Annual Report 5, 7 (2001), http://www.courts.michigan.gov/scao/resources/publications/reports/fcrb/fcrb_ar01.pdf (last visited May 19, 2004).

¹⁰⁷ Email from Don Hilber, Data & Research Manager, South Carolina Governor's Office, Foster Care Review and Guardian Ad Litem Programs, to Johanna Hartwig, National Center for Youth Law (May 18, 2004) (on file with author).

¹⁰⁸ Email from Cristina Varga, IT Coordinator, Foster Care Review, Miami, Florida, to Johanna Hartwig, National Center for Youth Law (May 20, 2004); Email from Don Hilber, Data & Research Manager, South Carolina Governor's Office, Foster Care Review and Guardian Ad Litem Programs, to Johanna Hartwig, National Center for Youth

Law (May 20, 2004); Letter from Marilyn Arnold, Associate Deputy Director, Administrative Case Reviews, Illinois Department of Children and Family Services, to Bill Grimm, National Center for Youth Law (May 26, 2004); Email from Kesi Relyea, Research & Development Coordinator, New Mexico Child Abuse & Neglect Citizen Review Board, to Johanna Hartwig, National Center for Youth Law (May 20, 2004) (all on file with author).

¹⁰⁹ Letter from Marilyn Arnold, Associate Deputy Director, Administrative Case Reviews, Illinois Department of Children and Family Services, to Bill Grimm, National Center for Youth Law (May 26, 2004) (on file with author).

¹¹⁰ In New Mexico, the review board receives "a list called an 'Interested Parties List' from the child's social worker prior to

each review, from which we send out invitation letters notifying those the social worker has listed of the review." E-mail from Kesi Relyea, Research & Development Coordinator, New Mexico Child Abuse & Neglect Citizen Review Board, to Johanna Hartwig, National Center for Youth Law (May 20, 2004) (on file with author).

¹¹¹ Email from Cristina Varga, IT Coordinator, Foster Care Review, Miami, Florida, to Johanna Hartwig, National Center for Youth Law (June 1, 2004) (on file with author).

¹¹² Letter from Marilyn Arnold, Associate Deputy Director, Administrative Case Reviews, Illinois Department of Children and Family Services, to Bill Grimm, National Center for Youth Law (May 26, 2004) (on file with author).

at court hearings to 60 percent.

Below are examples of various states' PIPs:

Alaska¹¹³

- Hire five administrative clerks to ensure that foster parents received notices of court hearings and case conferences. Agency attorneys "will ask for recognition [of foster caregivers] in all hearings where it is appropriate for foster parents to be heard." The CIP will encourage judges to ask foster parents if they want to be heard at the court hearing and then study court practices to determine changes in foster parents reception.

Connecticut¹¹⁴

- Action steps to ensure improved participation of foster parents in the treatment planning process include develop a pamphlet with the foster parent association to inform foster parents about their right to be heard. The agency also promises to work with judges to improve notice and opportunity. Monthly meetings with the chief juvenile court judge and law forums with other judges are the ways they propose to accomplish this.

Kentucky¹¹⁵

Increase number of family courts and analyze KRS 625.090 to assess need for revisions to be more consistent with ASFA. Pilot and implement the terminations barrier project.¹¹⁶

Nebraska¹¹⁷

- Strengthen policy. Send letters to courts reminding them of their responsibility. Conduct series of surveys of foster parent satisfaction.
- In collaboration with contracted

family organizations conduct a survey with bio families regarding whether or not they have been invited to and actively participate in case planning hearings and case review.

South Dakota¹¹⁸

- CPS will establish a baseline by the end of Quarter 1 after approval of the PIP by: determining the number of judges that currently allow foster parents, pre-adoptive parents, and relative caregivers to have an opportunity to be heard in any review or hearing held with respect to the child, and surveying a random selection of foster parents to determine what percentage are given the opportunity to be heard.
- Meet with the state Court Administrator's office to plan for creation of a committee composed of representatives of the judiciary, states attorneys, and Child Protection Services to address those practices or circumstance that affect compliance with the TPR (Termination of Parental Rights) provision and the opportunity for foster parents, preadoptive parents, and relative caregivers to be notified and heard.
- Hold a meeting of representatives from UJS (United Judicial System), CPS, States Attorneys Association, and State Bar to establish the committee and begin efforts toward detailing the extent of the issues and defining solutions.

Proposed Reforms

Adoption of Uniform Statewide Rules of Court

Different attitudes among judges toward foster parent participation are frequently identified as an obstacle to implementation of the opportunity

to be heard mandate. In the absence of uniform rules of court, each judge makes up individual policies regarding caregivers in the court. Uniform rules would help reduce the inequities that now exist in the system. Foster parents in one county should not be excluded from the court, when others in the county next door are treated as parties to the proceedings. Among other things, statewide rules should address:

- Content of the notice;
- Minimum number of days of advance notice;
- Person(s) or office responsible for providing notice;
- Delivery of notices;
- Standards and forms for submission of written reports;
- Documents foster parents should receive before the hearing.

Training of Court Personnel and Agency Staff

Juvenile court decisions are dependent on complete and accurate information about the children in their care. If the parties to a proceeding fail to provide adequate information, the court's ability to determine the child's best interests is limited. Information may be incomplete because the child lacks the representation of a Court Appointed Special Advocate (CASA), a guardian ad litem (GAL), or an attorney. Even when the child has representation, the quality of services may fall well below professional standards. In other situations, caseworkers may not submit reports in a timely manner, or may omit important information from their reports, because of inexperience or large caseloads.¹¹⁹

Even when the child does have a GAL or CASA, a foster caregiver's information is key to optimal judicial decision-making. No one else in the court spends as much time with the child as the foster caregiver. Their

¹¹³ Alaska Office of Children's Services, *Alaska Program Improvement Plan 30-31*, 72-73 (2003).

¹¹⁴ Connecticut Dep't of Children and Families, *State of Connecticut Program Improvement Plan 36-37* (2003).

¹¹⁵ Kentucky Cabinet of Human Resources, *Kentucky Program Improvement Plan Matrix 49* (2003)

¹¹⁶ The relevancy of amendments to this statute – one that defines the grounds for termination of parental rights – to improving foster parent participation in court proceedings is hard to imagine.

¹¹⁷ Nebraska Dep't of Health & Human Servs., *Program Improvement Plan, State of Nebraska*, 115-116 (2002).

¹¹⁸ South Dakota Dep't of Health & Human Servs., *Child Protective Servs., Program Improvement Plan 48-52* (2003).

¹¹⁹ See American Bar Association Center on Children and the Law, *State Court Assessments 1995-1998: Vol. 4 Timely Judicial Decision-Making*, at 47 (1999).

participation in a hearing can help ensure that the court has timely information about the child, and focuses its inquiries not just on the parents' compliance with the latest case plan, but upon the child's needs.

Increasing foster parents' involvement in decision-making, and equipping them to participate effectively, has an additional advantage. Foster parent retention is a problem in child welfare systems nationwide. When good foster parents leave the system, a valuable resource for children is lost. The costs of recruitment, screening, and training of new foster parents divert resources that are needed elsewhere. Research from the Bay Area Social Services Consortium suggests that increasing foster parents' role in decision-making improves foster parent recruitment and retention.¹²⁰

The frequency with which foster parents reported being discouraged from attending proceedings suggests a need to educate caseworkers and court personnel. A tone of cooperation and collaboration within agencies must be set. The increasing pressure in several states for enactment of foster parent bills of rights suggests that this remains an issue for caregivers.

Including foster parents in the decision-making processes requires the kind of "paradigm shifts" mentioned in the recent report issued by the Pew Commission on Children in Foster Care.¹²¹ This may be precisely one of those areas to be included in the multi-disciplinary, cross-system training called for by the commission.¹²²

Other court personnel and agency staff should be considered for inclusion in these trainings. In many jurisdictions, it is the juvenile court

clerk's office that is responsible for notifications to caregivers. Getting court officials to understand the importance of this task, and their role in it, may help improve performance.

Amendments to Federal Law

The focus of court reviews is often on the parents, and not the child.¹²³ Inquiries will be made about the parents' compliance with the case plan, adherence to a visitation schedule, progress in counseling, and the level of success in a treatment program. At a workshop, one foster parent explained how she attached several color photographs of her "children" when she submitted her report to the court. This practice helped to remind the judge that the file in front of her had a face, and that the person in the photograph was the reason everyone was in court.

Some of this focus on parents, and not children, is the result of the federal statute's language. While the statute emphasizes that the health and safety of the child is the paramount concern, that emphasis can be lost at review hearings. An amendment to the federal law, requiring that the court determine whether the child's needs have been met, would help to refocus the court's attention on the child's well-being.

It is apparent from the federal reviews that ASFA's vague "opportunity to be heard" language has led to widespread variation in foster parents' ability to participate in court reviews. In those courts where foster parents are precluded from attending court proceedings altogether, or are ushered in for a brief presentation, foster parents are deprived of a legitimate opportunity to be heard. If they do not know what the caseworker is saying, or what recom-

mendations the agency is making to the court, the court is deprived of their information.

An amendment clarifying that the foster parents have the right to attend every hearing and review should eliminate the current ambiguity in ASFA. Alternatively, foster parents should be permitted to waive their right to attend, and submit information in writing to the court.

Drafters of the ASFA provision on notice and opportunity appear not to have considered that a substantial number of children move from home to home while in foster care.¹²⁴ Only foster parents currently "providing care for the child" are entitled to notice and to be heard.¹²⁵ This often results in inequities, such as when a child who has been in one foster home for a substantial period of time is moved to another home or facility shortly before a review. The long-term foster parent's knowledge of the child, and his or her needs, is greater than the new caregiver's. However, only the current caregiver is entitled to be heard. An amendment to the federal statute incorporating California's de facto parent concept and criteria would allow long-term, knowledgeable foster parents the opportunity to be heard, and provide the court with valuable information that the new caregiver simply does not have.

Courts and agencies must work together if foster parents' participation in proceedings is to improve. The Pew Commission report recommends that collaboration between courts and social services agencies be included in amendments to federal law.¹²⁶ Under the proposal, Title IV-E would be amended and HHS would revise PIP guidelines to require

¹²⁰ Pamela Choice, Kirsten Deichert, Heather Montgomery, & Michael Austin, *Factors Influencing Foster Parents' Decisions to Continue or Cease Foster Parenting*, ii (Bay Area Social Services Consortium Center for Social Services Research) (June, 2000).

¹²¹ The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care* (2004).

¹²² *Id.*

¹²³ Buddy Faye Foster, Executive Director of Oklahoma Lawyers for Children, Comments at Annual Training Conference of the Foster Care Association of Oklahoma in Oklahoma City (Mar. 30, 2001).

¹²⁴ Bill Grimm & Isabelle Hurtubise, *Child and Family Services Reviews: An Ongoing Series, Part I: A Background to the Review Process*, Youth Law News, January-March 2003, http://www.youthlaw.org/downloads/CFS_Reviews_NCYL1.pdf.

¹²⁵ 42 U.S.C. 675(5)(G). In its response to comments on the federal regulations implementing this section, U.S. Dep't of Health & Human Servs. noted that federal law "does not, however, prohibit a State from offering previous caregivers the opportunity to be heard, if the State determines it is appropri-

ate for a particular child's situation." 65 Fed. Reg. 4065 (Jan. 25, 2000).

¹²⁶ The Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care* 38-41(2004).

¹²⁷ *Id.* at 39. "Meaningful collaboration" would include joint training, sharing data on a system-wide basis, and meeting regularly to review policies and procedures.

“state agencies to demonstrate substantial, ongoing, and meaningful collaboration with state courts.”¹²⁷

Although ASFA requires that foster parents be given an “opportunity to be heard in *any review or hearing to be held with respect to the child*,”¹²⁸ regulations limit foster parent participation to “permanency hearings and six month periodic reviews.”¹²⁹ There are other hearings about the child that do not fit within the narrow definition adopted by HHS. For example, in California, only a juvenile court judge has authority to order that a child in foster care receive psychotropic medication.¹³⁰ Under the current federal regulation, foster parents in California would not be entitled to participate in this hearing. Congress should clarify that whenever the child’s needs, services, permanent plan, or living arrangements are being considered, the foster parent must be afforded an opportunity to be heard.

Standardized Questionnaire

Many foster parents are reluctant to come to court. Nonetheless, they have important information for the judge to hear. Providing a questionnaire for foster parents is another way of improving the court’s knowledge of the child. State administrative offices of the courts, and rulemaking bodies, should be encouraged to adopt standardized forms, to facilitate greater participation of caregivers. Copies of the completed form should be provided to the parties in advance, so that parties may query foster parents about their reports. Availability of such a form, however, should not

preclude the foster parent from participating in proceedings in person.

Demonstration Project

Our research found that even when citizen panels conduct reviews, they are scheduled during the workday, making it difficult for caregivers to attend. A few states allow foster parents and others to participate in reviews by teleconference. Another state is trying to improve caregivers’ attendance by having volunteers make a personal phone call to them. Innovative approaches to improving participation should be further explored. States might tap into federal funds for demonstration projects to explore new approaches.¹³¹

Foster Parent Training

Most foster parents have had little contact with courts, and are intimidated by protocols and procedures. Recognizing that this might deter caregivers from attending, Michigan provides foster parent training on the court process. Several states provide information in their foster parent handbooks. Foster parents who understand the court process and protocols, and know how to negotiate the courthouse, are more likely to attend proceedings and be more effective in their presentations.¹³²

Conclusion

Seven years after enactment of ASFA, the mandate that foster parents participate in decision-making for the children placed in their homes remains unfulfilled. As a result, courts are deprived of important information about children whose care they are

responsible for overseeing. Decisions are being made in juvenile courts throughout the country without the benefit of the day-to-day caregiver’s observations and perspective. Until foster parents and relatives are a regular presence in these proceedings – judicial, administrative, and citizen reviews – the quality and wisdom of decisions made for children will remain wanting.

Bill Grimm is a senior attorney with the National Center for Youth Law, specializing in Child Welfare. He conducts trainings of foster parents nationwide on how to improve their participation and effectiveness in court reviews. He has been lead counsel in several class action lawsuits to reform foster care systems, including in Washington state, Arkansas, Utah, and Baltimore.

¹²⁸ Emphasis added.

¹²⁹ 45 C.F.R. 1356.21 (o) (year).

¹³⁰ Cal. Welf. & Inst. Code § 369.5.

¹³¹ Congress authorized U.S. Dep’t of Health & Human Servs. to approve ten demonstration projects per year. 42 U.S.C. §1320a-9. See Children’s Bureau, U.S. Dep’t of Health & Human Servs., *Information Memorandum ACYF-CB-IM-03-06* (Nov. 24, 2003) for the most recent instructions on applying for these projects.

¹³² Regina M. Deihl, Maria Martin, & Sandra Nunez, *Caregivers and the Courts: Improving Court Decisions Affecting Children in Foster Care*, Judicial Council of California, Center for Families Children, & The Courts (2002).