

Advocacy and Child's Attorney-Client Relationships during COVID-19: A Tip Sheet

What do Youth Need from their Attorneys?



In the uncertain times of the COVID-19 pandemic, many aspects of life have dramatically changed — schools, court hearings, social events. What has not changed, however, are the critical and urgent needs of youth involved in the child welfare system. Many attorneys, and particularly those who represent young people, may be struggling with questions regarding their obligations in a moment of social distancing and widespread anxiety. Youth involved in the child welfare system need and deserve robust advocacy in this time period. The underlying needs of youth — the *what* — remains the same; it is the method of advocacy and service delivery — the *how* — that may need to be adjusted.

An overarching principle of sound child welfare practice is that determinations should be made on a case-by-case, client-specific basis and informed by medical expertise. Attorneys should be wary of overbroad, one-size-fits-all policies, engage in individualized case analysis and recommendations, and advocate for agencies, courts, and other professionals to do the same. Attorneys should also ensure they are aware of, understand, and follow any relevant local, state-wide, or national mandates regarding COVID-19 safety protocols.

NACC offers the following practical considerations for providing high-quality legal representation amid the complex challenges presented by the COVID-19 pandemic. At this time — and always — youth need:

1. **A Communicative Attorney:** It is crucial that youth continue to access their legal rights during this time — particularly their right to counsel, through which youth can assert most other rights. Access to counsel may be complicated by facility policies, shelter-in-place rules, and personal health circumstances. At a minimum, youth want to hear from their attorneys. Youth in foster care have universally expressed this important desire and research has affirmed that timely communication is among the most valued and most feasible activities that attorneys can offer.¹ In addition, youth want their attorneys to hear from them — for their opinions to be actively solicited, their voices to be engaged, and their requests to be timely and appropriately attended to. What may be more challenging now is the *how* of communication — how to ensure frequent, clear, and thorough client counseling when face-to-face visits may be complicated by numerous factors.
 - a. *Attorney-client visits:* in deciding whether to conduct an in-person visit with clients, consider the health of both the attorney and the youth; communicate with the youth and family to ensure they are comfortable with in-person visits; explore visit location (number of people present, whether a safe and confidential outdoor location is feasible); balance social distancing with confidentiality; explain why you are taking any safety precautions

¹ See, e.g., Miller, J., Duron, J., Donohue-Dioh, J., & Geiger, J. (2018) *Conceptualizing effective legal representation for Foster youth: A group concept mapping study*. Children and Youth Services Review, 91, 271-278. <https://www.sciencedirect.com/science/article/pii/S0190740918304341?via%3Dihub>

you are (mask, hand sanitizer, etc.) to ensure comfort and cultural humility; ensure you understand any stay-home orders your jurisdiction has and whether your position/task is defined as “essential.”

- b. *Technology*: if in-person contact is not feasible, consider all the potential ways to use technology (video-chat, phone calls, etc.) to maintain confidential communication with your client; ensure you and your client have access to technology and understand how to use it.
 - c. *Frequency*: ensure you know what your jurisdiction’s rules and statutes, and/or your office’s policies, mandate about the frequency of visits/client communication and whether those rules have been relaxed or waived; consider what frequency of communication is appropriate, based the needs of the individual case/client; collaborate with the youth’s team members (social worker, investigator, service providers, etc.) to ensure the youth is receiving frequent and regular communication.
2. **An Informative Attorney**: Youth may be understandably anxious during this time, and they need accurate information from their attorneys to help manage those feelings and make informed choices about their own well-being. Attorneys should keep in mind how children of different ages perceive time differently; for youth, two or four weeks (or more) of social isolation, lack of family contact, and/or quarantine will be experienced differently than that same time period for adults.² These developmentally different concepts of time are compounded by the stress of the unknown of how long these measures may last. Attorneys should ensure that youth are connected to someone (who may be the attorney or another trusted adult) who can help answer their questions about COVID-19, discuss the emotions they are experiencing, and help them sort fact from fiction. [The NACC COVID-19 Resource Hub](#) is a good place to find tips for talking to children and teenagers about COVID-19 and to find current information.
3. **A Knowledgeable Attorney**: Information, policies and protocols are rapidly evolving and changing, and differ from state to state. The potential for misinformation is also high. Especially considering school and other closures, youth rely on their attorneys for information. It is imperative for attorneys to stay updated on important policies and share that information with their clients:
- a. Court closures
 - b. School closures
 - c. Meal programs
 - d. Group home/detention facility policies, and program closures, such as school, within facilities
 - e. Child welfare agency protocols
 - f. Local, state, and national guidelines regarding shelter-in-place, stay-at-home, and social distancing policies
4. **A Diligent Attorney**³: It can be challenging for youth in the foster care system to get what they need to be healthy, safe and stable, and this reality is compounded by the impacts of COVID-19. Attorneys must monitor and ensure case planning to ensure their clients have access to:
- a. *Medical care*:
 - i. Youth/caregiver knows what to do/where to go if the youth gets sick;

2 See, e.g., Donald N. Duquette & Ann Haralambie. “Chapter 31: Representing Children and Youth; §31.6.1 – Identifying Permanency Needs and Protecting Important Affiliations”, in *Child Welfare Law and Practice: Representing Children Parents, and State Agencies in Abuse, Neglect, and Dependency Cases* (Donald N. Duquette, Ann M. Haralambie, & Vivek S. Sankaran eds., National Association of Counsel for Children, 3d ed. 2016).

3 Several law offices have assembled tip sheets and checklists for issues/areas for attorneys to keep in mind when working with youth. See, e.g., Youth Law Center: “Making an Emergency Plan with Transition Age Youth in Foster Care A Checklist for Dependency Attorneys, Youth Providers, and Advocates”, https://ylc.org/wp-content/uploads/2020/03/Emergency-Plan-with-TAY-in-Foster-Care_YLC.pdf; Juvenile Law Center: “Making an Emergency Plan with Transition Age Youth in Foster Care in Philadelphia”, https://jlc.org/sites/default/files/attachments/2020-03/Emergency-Plan-with-TAY-in-Foster-Care_Philadelphia.pdf

- ii. Youth has sufficient medical supplies, medication/refills;
 - iii. Youth/caregiver can access telehealth appointments for medical and psychiatric care.
- b. *Food:*
- i. If youth qualifies for school lunch programs, youth/caregiver knows where meals are being provided during school closures;
 - ii. Youth/caregiver has access to any benefits they are entitled to (WIC, food stamps);
 - iii. Youth/caregiver is receiving any additional supports the agency is offering.
- c. *Placement:*
- i. Placement is appropriately balancing youth’s safety, well-being, and permanency;
 - ii. Youth has age-appropriate supervision;
 - iii. Caregiver has needed supports to continue to provide appropriate and nurturing care and supervision while school is closed, or if they or a family/household member gets sick or is exposed to the virus;
 - iv. Youth is engaged in appropriate (virtual) social activities/stimulation, in keeping with social distancing requirements (consider using federal law to support requests, within the confines of state restrictions, for youth to have “regular, ongoing opportunities to engage in age or developmentally appropriate activities”)⁴; for example, the opportunity to video-chat with friends and classmates, or participate in hobby groups that have transitioned to virtual meetings;
 - v. Agency has a contingency plan/respice options if caregivers get sick or cannot take care of the youth for related reasons;
 - vi. If youth is in college, youth has somewhere to go and is aware of state regulations/policies that might enable them to stay in the dorms;⁵
 - vii. If youth is in congregate care, facility is complying with licensing requirements (i.e. staffing) and facility is balancing taking precautions against the virus with ensuring youth’s well-being (i.e. not unnecessarily and unjustifiably isolating youth).
- d. *Technology:*
- i. Youth has a cell phone and the bill is being paid;
 - ii. Youth has access to a computer to engage in remote schooling and communicate with family and peers;
 - iii. A “reasonable and prudent parent” is identified who can provide cell phone and computer access to the youth (resource parent, group home, agency).⁶
- e. *Education:*
- i. Youth’s school has provided lesson plans and instructional support;
 - ii. Youth has access to those learning opportunities;⁷
 - iii. Youth’s credits and ability to graduate on time are not impacted;
 - iv. If the youth is receiving special education services, the school has made provisions to implement the IEP and ensure access to the curriculum.

4 42 U.S.C.A. § 675a (a)(3)

5 See March 12, 2020 Letter from Associate Commissioner Jerry Milner, Children’s Bureau: “Housing Support When Universities, Colleges Close Due to COVID-19” https://www.acf.hhs.gov/sites/default/files/cb/housing_support_covid19.pdf

6 42 U.S.C.A. § 675a (a)(3); 42 U.S.C.A. §675 (10).

7 See, e.g., American Bar Association: “At-Home Education and Learning Resources for Foster Youth During COVID-19”, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2020/at-home-education-and-learning-resources-for-foster-youth-during-covid-19/> (March 20, 2020)

f. *Services:*

- i. Youth/family has remote/virtual access to services, if services are disrupted (youth’s therapeutic services; prevention services; in-home services; reunification services for parents);
- ii. Family has access to services necessary for prevention and daily living (housing, rental and utility assistance; transportation assistance; daycare vouchers; legal services);
- iii. Youth/parents are not penalized for non-participation.

g. *Client-counseling:*

- i. Youth’s attorney takes the necessary time to explain legal options, permanency and services in developmentally appropriate ways;
- ii. Attorneys are prepared to counsel older clients, if they are in a jurisdiction where youth over eighteen can opt out or back into the child welfare system, considering the ways COVID-19 may uniquely impact that decision;
- iii. Attorneys ensure parenting teens have appropriate childcare and contingency plans set up, as well as that they understand appropriate safety precautions.

5. **A Zealous Attorney:** Youth need their cases to move forward during this time. They need to receive services, to be timely reunited with family, and/or to achieve permanency. *COVID-19, standing alone, without an individualized determination, should not be accepted as a blanket justification for why youth should not go home, be adopted, or achieve independence.* Attorneys have an important, and increasingly complicated, role to play in ensuring clients’ legal rights are protected and advanced, and that due process does not suffer, even in a legal landscape where more and more courts are closing their doors. Practitioners can effectively advocate in this new landscape, using written advocacy and virtual participation in hearings. At a minimum, attorneys for youth must advocate against agencies and courts applying a one-size-fits-all approach during this crisis and must ensure:⁸

- a. *Access to justice and due process rights are guaranteed:* even where legitimate health and safety concerns may present themselves, attorneys should check that others’ (and their own) concerns, anxieties, and biases do not negatively impact the reciprocal rights of children and their parents. Parents and youth should be engaged in these decision points, without making blanket assumptions about what is best for all parents and children in these situations.⁹
- b. *Urgent/emergency matters are addressed:* where courts are closed, request hearings by phone and build a record through written advocacy (reports, motions).
- c. *Clients have access to court and can attend,* when safe and appropriate, or, at a minimum, through teleconferencing or other virtual participation; youth have continued access to translators, where needed.
- d. *Family time,* including contact with parents and siblings, must be protected and prioritized, unless factual, case-specific health concerns necessitate a temporary, virtual alternative; attorneys should advocate for courts and agencies to incorporate guidance from public health authorities such as the Centers for Disease Control and Prevention (CDC) and medical experts such as the American Academy of Pediatrics (AAP) to inform their analyses, and empower youth and parents to be involved in decisions regarding how visits should continue; consider creative means to effectuate family time, including expanding the scope of kin who might assist with transportation or supervision, moving visits outdoors, and allowing unsupervised visits

8 See March 27, 2020 Letter from Associate Commissioner Jerry Milner, Children’s Bureau: https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/news_items/march_27_2020_letter_from_a.pdf

9 For more on the importance of Youth Voice, see Administration for Children and Families: “Engaging, empowering, and utilizing family and youth voice in all aspects of child welfare to drive case planning and system improvement.”, ACYF-CB-IM-19-03, <https://www.acf.hhs.gov/sites/default/files/cb/im1903.pdf> (August 1, 2019)

where there are no concrete safety concerns; ensure virtual options for visitation and/or virtual supervision if in-person visitation or supervision poses an actual, substantiated health risk; consider increasing virtual family time (phone calls and video) frequency; continue family therapy, if applicable and available, through video technology.¹⁰

- e. *Permanency is not delayed:* reasonable efforts should still be addressed, case plans and service delivery should be adjusted to meet current circumstances, and COVID-19 should not be the only or driving factor to delay a permanency plan (e.g. a pre-planned return home, adoption finalization, etc.). And advocates should ensure they note (and preserve their record) if/when service plans, permanency, etc. were impacted by COVID-19. This may include requesting written reasonable efforts findings that accurately reflect what has or has not happened to move the case forward.
- f. *Collaboration amongst parties:* with more courts closed, attorneys must work together and hone their negotiation and mediation skills outside of court to get clients what they need.
- g. *Youth are not unnecessarily subjected to the delinquency/criminal justice system:* as more restrictions are placed on individuals, youth in the dependency system are especially vulnerable to arrest, detention, and coming under the jurisdiction of the delinquency and criminal justice systems. Attorneys should advocate to prevent increased incidence of crossover youth and keep children home and out of detention and congregate care (which has become even more harmful due to the spread of COVID-19).

6. **A Healthy Attorney:** Youth need their attorneys to practice self-care — if the attorney is not healthy, they will be unable to fulfill their obligations in a way the client needs. Attorneys can and should use existing resources that focus on how to ensure self-care and manage anxiety in the age of COVID-19. And remember — you are not alone. NACC is here to help build community with your peers through this crisis.

Most of all, what youth need from their attorneys now is continued **zealous advocacy**. The *how* may be different — and more virtual — than before this crisis, but the *what* — investigation, client counseling, ensuring reasonable efforts, advocating for best practices, prevention and permanency — remains unchanged. As always, NACC is available to help support attorneys in developing and implementing best practices — through resource-sharing, collaborative dialogue, and training opportunities. At NACC, your practice is our purpose.

NACC’s COVID-19 Resource Hub can be found here: <https://www.naccchildlaw.org/page/CoronavirusCOVID-19>. ■

¹⁰ Administration for Children and Families: "Family Time and visitation for children and youth in out-of-home care.", ACYF-CB-IM-20-02, <https://www.acf.hhs.gov/sites/default/files/cb/im2002.pdf> (February 5, 2020)

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Every child and family involved with the court system is well-represented by a lawyer who works to ensure that every child is raised by a nurturing family and has positive life opportunities.

Our Mission

To advance the rights, well-being, and opportunities of children impacted by the child welfare system through access to high-quality legal representation.