



## NACC General Membership Call/Webinar on COVID-19

Thursday, March 26, 2020

2:00pm-3:00pm MT

### Meeting Notes

117 live participants

(Identifying information and specific jurisdictions removed in notes)

### Moderators:

**Kim Dvorchak, JD** – NACC Executive Director

**Allison Green, JD, CWLS** – NACC Legal Director

**Kristen Pisani-Jacques, JD** – NACC Training Director

### Special Guests:

**Jerry Milner, DSW** – Associate Commissioner, Children’s Bureau, U.S. Dept. of Health and Human Services

**David Kelly, MA, JD** – Special Assistant to Commissioner Milner, Children’s Bureau, U.S. Dept. of Health and Human Services

### Introductions:

NACC is working to serve members and be a source of information for practitioners during this time. We have developed our online [COVID-19 Resource Hub](#) and we are adding resources daily. We are hosting virtual meetings with the Children’s Law Office Project (CLOP) group as well as the NACC State Coordinators to serve as a forum for communication and collaboration. That is our intention with today’s call as well – to hear from you about what is happening on the ground in your jurisdiction, learn what practices and protocols are being implemented, discuss and brainstorm how to handle common concerns and the situations we’re facing, and find out what efforts would be most helpful for NACC to undertake to assist you in your advocacy during this time. We are not pandemic experts, and this is not a training webinar, but we want to hear your experiences and questions today. There *will* be a training webinar on this topic next week (CLE accreditation pending):

**Thursday, April 2<sup>nd</sup>** from 4:00pm-5:30pm ET, NACC will be hosting

### ***Zealous Advocacy in the Time of COVID-19: Practical Tips and Best Practices***

This webinar will be moderated by NACC’s Kristen Pisani-Jacques and presented by:

**Jennifer Rodriguez**, Executive Director, Youth Law Center

**Jenny Pokempner**, Senior Attorney, Juvenile Law Center

**Chris Henderson**, Director, Colorado Office of the Child’s Representative

Co-sponsored by the American Bar Association Section of Litigation Children’s Rights Litigation Committee

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As the call progresses today, we will hear updates from Jerry Milner and David Kelly of the federal Children’s Bureau and then we’ll solicit your input, experiences, and questions by polling you on topics where we’ve heard there are the most concerns and then discussing your input.

### Commissioner Milner’s Updates:

Trying to be as responsive as possible to all involved including courts, attorneys, agencies, youth and families in this ever-evolving situation. Guidance and communications issued so far include:

- [Dear Child Welfare Leader Letter](#) on relaxing some administrative requirements of agencies
  - Virtual caseworker visits ok
  - Extensions for PIP reviews
  - Postponement of title IV-E eligibility reviews
  - Clarification that there are no specific federal guidelines on timeframes for abuse investigations and that agencies need to work closely with state and local authorities on abuse reporting

- [Dear Child Welfare Leader Letter](#) on working with older youth who've been displaced due to college closures
- [Virtual Town Hall](#) with over 1,000 participants – youth and child welfare professionals (1,400 more wanted to participate but couldn't due to virtual platform capacity). They will be continuing to hold these so the youth know that CB cares about them, is concerned with the situation, and is interested in hearing their experiences.

**CB will shortly be issuing a letter with guidance to judicial and legal child welfare leaders (CIPs)** responding to court closures, visitation restrictions, etc., and the effects these reactions are having on children and families. The letter will:

- Reiterate title IV-E eligibility requirements;
- Reemphasize the critical need for proceedings/access to court to be maintained. Proceedings may not be able to happen in person, but parties still need to have access. Goal of trying to avoid delaying reunifications and working on case plans;
- Emphasize that reasonable efforts need to continue;
- Address concerns about court orders that suspend parental contact;
- Discuss need for courts to make case-by-case, intentional decisions rather than blanket orders;
- Encourage use of technology in an effort to continue with court calendars and routines; and
- Emphasize the importance of continued access to justice and high-quality legal representation which includes regular communications between attorneys and clients as well as the ability for everyone to participate in proceedings.

**Note: On March 27, [Children's Bureau released a letter to child welfare legal and judicial leaders, including an attachment listing no-cost/low-cost tech resources.](#)**

## **General Topics for Discussion on Today's Call**

*(What are you seeing in these areas? What are you doing? Do you have questions on these topics?)*

### **Suspension of family time**

**Participant Poll: Are you seeing blanket cancellations or restrictions on family time?**

Yes = 70%

No = 30%

**Moderators:** These poll results are alarming. It is an abuse of discretion for courts not to use their discretion. Courts need to be making case-by-case decisions. We're seeing blanket suspensions of visits for wildly different time periods (anywhere from 2 weeks to 2 months). Courts need to ground these decisions in evidence. Should be frequent virtual visitation required, at least. Need to support the use of and access to technology for families.

### **Participant Comments/Questions**

- In my county, we don't have a uniform procedure for children to visit with their families. Some agencies are doing Zoom, others in person, and others are doing it at all. Is there a federal mandate that I can refer to when encouraging the visits during this trying time?
- In several states, the blanket decision to end in-person visits has come from the department. It has not come from the Courts.
- Are those blanket restrictions coming from courts or agencies mostly?
- The judges didn't make the decision in our cases. The director of social services made the decision and informed the judges. No motions were filed.
- My state hasn't issued policy one way or another (either the courts or DCF), which has left with slapdash/patchwork solutions across the commonwealth
- In my state, our courts have not issued blanket suspensions of visits. Most of our suspensions have been for those visits supervised by our Child Welfare Agency DHR. They are encouraging alternate visitations with no specific provisions.
- A big concern is keeping the professionals & others who are supervising the visits safe in areas where the infection rate is rapid and growing hourly and daily.

- Will there be additional funding to states for unplanned expenses incurred (e.g. technology, childcare or tutoring costs as children are at home, housing for IL youth, etc.) as a result of the pandemic?

### Participant Poll: Are you seeing virtual options implemented?

Yes = 95%

No = 5%

**Moderators:** Are there creative solutions you are seeing out there? How are people deploying technology? What do we do when virtual visits might not be age-appropriate (very young children)? Again, the solutions need to meet the specifics of the situations. There needs to be family-based decision-making.

### Participant Comments/Questions

- So far only DHHS is having virtual visits. Agencies are inconsistent.
- Virtual options: inconsistently offered
- But virtual options are taking a long time to get set up and not happening in many cases. No urgency.
- It is not happening very frequently in my county.
- Yes, also seen a 30-minute video call offered as a replacement for a one hour in person visit (per week), and DCF still requiring that they supervise the call (rather than foster parents), not allowing for more frequencies
- I have noticed one problem is that the foster parents have been placed in charge of providing virtual visitations. There is no schedule provided by the department workers.
- But again, individual offices are being left to come up with their own solutions and procedures
- For areas that are under stay home orders, what services and FPOS tasks are being considered "essential" and thereby required despite the stay home order?
- DCF has issued guidance about video-visits for social worker home visits, but not parent-child visitation

**Moderators:** It's also the time to use creative litigation – pleadings are all the more important now. It is incumbent on advocates to be building a record on what is happening in the case – we are all (justly) thinking in the short term right now because none of us knows what's going to happen next – but we also need to think long term as well. It's important to be documenting for record why certain services and visits are happening and why they're not, why times to permanency are different, why there's been a goal change, etc.

## Clients' rights and due process in the atmosphere of rapidly closing courts

**Moderators:** Are courts closed in your jurisdiction? Are you seeing due process violations? How are people getting matters in front of the court?

### Participant Comments/Questions

- How are courts making the judicial determinations without hearings? Are courts making the reasonable efforts findings without prejudice subject to reconsideration when the court can hold a full a hearing?
- I represent parents and Children. Our courts are semi-closed until April 16, 2020 but we will have hearings for emergencies and constitutionally required hearings. As to Permanency Hearings and Reviews is there any prohibition in having those hearings by Phone, or video? Is there any stipulation from all parties in Permanency hearings consenting to a finding of reasonable efforts and best interest by written agreement?
- Review hearings are continued to May. Shelter care and emergency motions are heard by telephone (but allows parties to appear in person, if they would like)
- Our court is not making judicial determinations at all. We are only having emergency removal hearings and preliminary hearings for Juvenile justice cases.
- The Courts have simply passed all hearings, outside show cause. So there are no findings being made by the Courts.
- In my state courts only hearing emergency matters
- Including temporary custody/72-hour hearings
- Where courts are closed, are only county/regions of courts closed or is the entire state closing their courts?
- By phone or video if at all possible
- Another problem is that service providers are closed so parents aren't able to engage in services
- There has been some success in our county, when parents already have unsupervised visits, to get agreed orders for the child to return home (instead of no visits and delays)

- Non-essential matters are being adjourned by court clerks 60-90 days out with no input as to scheduling by attorneys. Courts are only hearing matters on CW matters on essential matters involving remands, OPs only. No filings/motion plastics about visitation for example are being allowed. Virtual visitation is being arranged by foster care agencies.
- Some courts closed completely for shorter periods due to known infections

**Moderators:** Sometimes the best we can do is be an ear for the client; bear witness to their uncertainty; have frequent, clear, honest communication about uncertainty. It's part of our role. As we learned in NACC's February webinar on youth perspectives regarding high-quality legal representation, research shows that what youth want from their attorney more than anything is communication. Children's Bureau is encouraging CIPs to help children and families get access to technology to facilitate communications among families and between attorneys and their clients.

## Access to counsel, especially for youth in congregate care and detention facilities

### Participant Poll: Are you seeing in-person restrictions on access to counsel?

Yes = 67%

No = 33%

### Participant Comments/Questions

- How are LGALs around the country visiting their clients who don't have Zoom or Facebook technology? Or those in residential placements that are not allowing visits?
  - We are not allowed to visit Juvenile Justice children at all, and we are not allowed into residential placements per the executive order from the governor. Not sure the court can do anything about that.
  - There aren't formal restrictions on in-person access. We typically visit clients at home. But foster parents don't want anyone in their homes.
  - Does a stay home order affect in home visits if non-emergency? Is it still considered an essential activity?
  - Even though there are no mandated restrictions about attorney-client contact happening in person many professionals are under shelter in-place rules and are also self-isolating, which is impacting in-person visits
  - What suggestions do you have when CPS claims they have no plans for a child on runaway if child returns and past placement refuses return, and other placements are not accepting new children?
  - What about restrictions for children under 13 accessing internet?
  - Imposed restrictions come from Dept. of Corrections in our state too. And some residential facilities have closed to visitors
  - No family visits at incarceration facilities, less clarity around attorney client visits in those facilities
  - We need to talk about early reunification, trial home visits as a response to those restrictions.
  - My states is being sued for the release of many inmates
  - How do you ensure confidentiality when speaking with client electronically?
  - Not yet. I believe the detention facility is working on it. We are not having hearings in my county to address whether or not they should be there at all. That is why I need the federal mandates that will help with the motion.
  - I represent parents. Some can't even see their children who are in family placements
  - If a relative is available, what is the likelihood of the county Agency at this point in time evaluating that family member for RFA, including assessing the home?

**Moderators:** We have to consider the health of everyone involved in this rapidly changing situation. Abide by recommendations on social distancing but be creative about where visits could happen (as appropriate to each client). Maybe in a park. Not recommending this for everyone, but it's a possibility. Get creative with solutions. Engage clients and figure out what they want. Many young people are very tech-savvy. Use the modes of communication that are most comfortable for them. Even if we aren't used to them, maybe it's time for us to learn. Also, with the various state mandates about no visits in facilities, now is the time to reconsider that facility placement. Does your client need to be in that facility? COVID-19 has changed the whole safety analysis. The safety assessment may need to be rebalanced. Things change. Be creative with your advocacy – if your jurisdiction

has imposed limits on visitation/family contact for health reasons, use that same argument for why congregate care placement is no longer appropriate then either.

## Ability to meet youth/family's basic safety, well-being, and permanency needs in this crisis

**Participant Poll: Are you able to help youth/family meet their basic safety, well-being and permanency needs?**

**Are services available?**

Yes = 65%

No = 35%

### Participant Comments/Questions

- Some services have gone online, but many other services are not available
- I had to answer no on that last question - because it feels like everything is "on hold" including treatment services
- Substance abuse treatment providers here have moved to phone and video services
- One problem is that funding for cab transportation to UA services has been suspended
- Does the court ordered case plan need to be changed if we look at hierarchy of needs?
- We're pushing return based on that triangular balance between threat-vulnerability-capacity. Need to return children based on safety issues not case plan being finished. Following up is important
- True, but we need to also balance the safety in regard to contact/exposure risks
- My state is doing a fairly good job of keeping young people in the dorms. One placement is allowing former foster youth to return for emergency placement if they were formerly a part of the agency.

**Participant Poll: Are cases moving forward?**

Yes = 37%

No = 63%

### Participant Comments/Questions

- Where courts are holding only emergency hearings, which seems fairly prevalent, it's going to be difficult to move children to permanency/reunification
- Emergency hearings/removals are happening, but trials are not happening yet. if they do happen, they might be telephonic, which is a due process issue.

**Participant Poll: Are removals increasing?**

Yes = 14%

No = 86%

### Participant Comments/Questions

- Intakes are down 50% nationwide
- My state actually has a historic low in Hotlines, which is worrisome
- Really too early to tell whether removals are increasing, decreasing or remaining steady
- We have seen drastic downturn in removals as agency workers are almost all working remotely, which is concerning

**Moderators:** Please contact NACC if you don't know who your CIP is and we will connect you in order to help with access to technology and other needs. Right now, people are clearly going to be putting things like food and housing ahead of other things that might be on a case plan. Food and shelter will be considered more important than substance use disorder counseling in terms of hierarchy of needs. But it is also incumbent on agencies to still try to get services in place – there are some telehealth and virtual options for some services. This time should not be wasted or given up as a period of inaction. Try to keep things moving. Keep working toward getting clients out of congregate care, toward early reunification if assessments/home visits can be completed. We all have to balance concerns of health and safety. Are youth more at risk outside the home or inside the home given the current crisis? Are artificial barriers delaying reunification? This is a hard time for everyone – caseworkers are in the same difficult situations. Attorneys and agencies can work together to help meet youth/family needs. Right now, everything seems to be changing: everyone's daily routines and plans have changed, the whole country's "plans" have changed, so the mindset cannot be that case plans are in a vacuum and aren't affected in the same way. This is not the right mindset.

## Equitable access to technology

### Participant Poll: Do youth and parents have equitable access to technology?

Yes = 27%

No = 73%

### Participant Poll: If they do have access, do they know how to use it?

Yes = 71%

No = 29%

### Participant Comments/Questions

- Our youth do; the department is working on expanding the technology program and making sure every youth has tech. Parents do not.
- I am hearing from foster parents that they have been told to handle visitation as they can with the technology they have. Nothing is being provided to ensure options are available.

**Moderators:** School districts have gone to online learning. Access to technology is critical for education, and also for family time and access to their support network, including you.

## Unique considerations for older and aging-out youth

**Moderators:** What are the unique considerations for older and aging-out youth that you're seeing? Please visit our [COVID-19 Resource Hub](#) for tip sheets on this. Send us your ideas too. We are all in uncharted territory and need to be learning from each other. This is a crucial time for older youth.

### Participant Comments/Questions

- For older youth we are re-visiting family members who may have been unable to take custody of youth when they were small. We are also seeing a loosening of the requirements for older, particularly displaced youth to get them a roof over their heads.
- What happens with the children who are scheduled to age out of foster care during this time? Some folks are petitioning their Governor for extending extended care

**Moderators:** Revisiting the possibility of family placements and kinship care for older youth is important. Things may have changed (ex. foster care licensing requirements and available waiver options) since original placement decisions were made.

## What are the needs of the field right now that NACC should help with/support?

**Moderators:** What are your needs as practitioners right now? What can NACC do for you? Particular advocacy at the federal or state level? Letters to governors? How can we be of service to you?

### Participant Comments/Questions

- Will the NACC be creating its own recommendations regarding access to the Courts?
- We need letters to the governor in support of our youth, letters to our county to open the courts for these hearings and mandate visits for the children.
- Will NACC provide guidance on virtual visits for not just courts, but also for families?
- Courts are grappling with what they can and cannot do with technology. If we can get guidance from a national level NACC, Children's Bureau, the courts would feel better about making a decision to hold hearings via virtual methods.
- If you could provide tips for remaining safe while visiting the children, it would be helpful. And, finally, a letter advocating for the three-month delay in closing any cases for older youth.
- I'm a CIP. It's helpful to share that states may call their CIP something different though.
- Many of the attorneys are self-employed. All of my cases come from court appointments. Many of my colleagues are in trouble financially. Making legislators aware of us and including folks like us in the stimulus packages, allowing us to file for unemployment.

- Any guidance on whether judges can appear remotely would be helpful. We have case law that does not allow hearings to be held "in chambers." Also, any guidance on ethics for attorneys and judges during this time would be helpful
- Can you write a letter suggesting that courts institute electronic filing for juvenile courts and conduct video hearings in these times?

**Moderators:** NACC will be releasing a statement next week on positions and priorities. We are also still working on revising our Recommendations for Representation of Children in Abuse and Neglect Cases and will now be sure we consider the structures that should exist to ensure advocacy during emergencies or crises.

We will send instructions to you all for how to join the NACC listserv so you can stay connected and continue the conversation.

Clarification on what "CIP" means: The federal government provides some funding to child welfare courts. These are Court Improvement Program (CIP) grants. Each state has a CIP although it may be called something else (e.g., Texas Children's Commission (TX), Pelican Center for Children and Families (LA)). These funds cover training for attorneys, technology, other advances and initiatives like baby courts, tether courts, etc. The CIP in your state is charged with making sure child welfare courts move forward on continuous quality improvement. Please let us know if you'd like NACC to connect you with the CIP in your state.

### **Closing Thoughts**

NACC's community is advocating for a vulnerable population during a difficult time – and we are all working with our own fears and anxieties as well. These blanket orders that don't include family voice or discretion aren't good solutions, however. Now is the time for push-back whether it's through written advocacy, out-of-court negotiation skill-building, etc. Use this as an opportunity to hone those skills. Keep in mind that, while lots of things seem "on hold" right now, for the families we serve, time does not stop – child development doesn't stop, the bonding process can't just be paused and picked up again after this pandemic is over.

People ask, "Why does a child need an attorney? Doesn't the caseworker look out for the child's interests?" without understanding that the caseworker has other considerations and works for an agency that is balancing other priorities as well. A crisis like this is *why* child representation exists – so that someone is focused only on the child, so that an individual's voice is heard, and needs are met in times when blanket orders get issued without regard for individual circumstances. Lawyers for children and parents are vital to ensure access to the courts, family time, and resources. This is really the time where the rubber meets the road for this field.

We want to thank everyone for their participation today. We will make notes from this meeting available to you. Remember to take care of yourself. Get outside. Get exercise. Spend time with your family. Stay connected and stay healthy!