

WHAT HAPPENS WHILE YOUR CHILDREN ARE IN FOSTER CARE?



COURT PROCEEDINGS

FACT-FINDING PHASE

Whether your children are living with you or not, the Judge will have to decide whether you have neglected or abused your children. This is called the **fact-finding** stage of the case. You will have to decide if you want to have a hearing, or if you want to settle the case.

Pre-trial/Settlement

Before you decide whether to go to trial (hearing) or to settle, there is certain information you should have. You should review a copy of the neglect petition that has been filed against you. Talk with your attorney about any allegations (charges) that you believe are untrue. Your attorney should also have a copy of the ACS or foster care agency case record. This case record should contain information about the ACS caseworker's investigation and should also show whether or not they offered any services to keep you with your children.

You should also help your attorney prepare for your case. Think about what information you can gather to help in your defense. Are there any witnesses or documents that can help you prove that there was no neglect, or that you were not responsible for it?

Most fact-findings are resolved through settlements, not trials. The alternatives to going to trial are:

- **Submit to the jurisdiction** of the court without admitting to the facts. This means your children can be placed in foster care and the judge can order you to comply with services, but you do not admit to the allegations in the petition. This is also called a 1051(a) admission.
- **Admit to all the charges** that are in the petition.
- **Admit only to the charges that you agree were neglectful acts.** For example, if the petition charges you with educational neglect and drug use and you believe that ACS can prove educational neglect with school records, but that there was not drug use, you may try to negotiate an admission only to the educational neglect.

- **Agree to an Adjournment in Contemplation of Dismissal (ACD).** The neglect petition would be dismissed in a year if nothing goes wrong. You will probably be under the supervision of ACS and will have to meet certain conditions, such as continued counseling, completion of parenting classes, etc. The children may be returned to you upon specific conditions. You will still have an indicated case on your record.

It is important to talk with your attorney about whether it makes sense to have a hearing in your case. You should consider the evidence of abuse or neglect. You will want to consider the strength of ACS' case and the strength of your case. For example, ACS may have a strong case if it has urine tests proving that you were using illegal drugs. On the other hand, you may have a strong case if you are able to prove that you had a prescription for the medication that showed up on the test.

You should think about what you will gain and what you will lose from having a trial. If you win at trial, your children will be returned and there will be no finding of abuse or neglect entered against you. If you lose at trial, there will be a finding of neglect entered against you. In addition, whether you win or lose, a fact-finding trial may also take a long time to complete. Most likely, there will be several adjournments and the hearing may continue over a period of months.

ACS' case

If you ask for a hearing, ACS must prove the allegations that they have charged you with in the petition. To prove the allegations, ACS will have **witnesses** tell the court what they have seen and heard. ACS may also have **documentary evidence**, like police reports, hospital records, and school records.

ACS has the **burden of proving its case**. That means it must go first, and it must prove its case by a **fair preponderance** of the evidence. ACS must show that it is more likely than not that abuse or neglect happened and that you were responsible. You may know that in criminal cases, the standard is proof beyond a reasonable doubt. The standard at fact-finding is far lower; a judge only has to believe that it probably happened. It is much easier for ACS to prove its case in an abuse or neglect hearing than it is for a prosecutor to prove his case in a criminal court.

During ACS' case your attorney will have a chance to **cross-examine** or question any witnesses ACS presents. Your attorney should have a copy of the caseworker's records so that she can ask particular questions about what is contained in those records. The law guardian appointed to represent your children will also have a chance to cross-examine the witnesses.

ACS will probably have its investigative caseworker testify. This caseworker can tell the court about **anything you said and anything your children may have said** about the alleged abuse or neglect. The caseworker can also tell the court about anything he observed, like a clean or messy house, signs of drug use, or marks or bruises on the children. There may also be other witnesses.

If the allegations are excessive corporal punishment, the caseworker might testify about what the children said, what you said to the caseworker, and any marks or bruises he observed. Doctors or nurses might testify if they observed any bruises. If drug use is alleged, the caseworker might testify about anything he observed, and anything you may have admitted to him. ACS might also show the judge drug tests or police records.

"With me, at first I was really open and honest with the ACS fact-finding worker, I thought she was going to help me. After all, I had called for help when my husband threatened violence. I left myself so open that she used it against me and turned everything all around. I advise you not to do that because they do use a lot of the information that you give them not to help you but to backstab you. They twist it and they turn it and they add to it and, you know, try to force you into a lot of things that they shouldn't, they really shouldn't. They use you for their game. When you go to court, you don't expect them to turn on you. And that's what she did. She turned on me. The minute we got into the courtroom."

Your case

After ACS presents its case, you will have an opportunity to defend yourself by presenting any evidence or witnesses that will show that your child was not abused or neglected, or that you were not responsible for the abuse or neglect.

If you are going to trial, **you will almost certainly have to testify**. This is very different from Criminal Court. In Criminal Court, people charged with crimes can assert their Fifth Amendment Privilege. This means that the judge cannot consider their failure to testify in deciding whether they are guilty. In Family Court, if you do not testify, the judge can assume that the allegations against you are true.

You can also consider calling **other witnesses**. For example, if the allegations are that you were not in a drug rehabilitation program and you were, you might want to call your counselor from the program. You should also talk with your attorney about what **other documents** might be helpful. For example, if you are facing medical neglect charges, you may want to introduce medical records other than those introduced by ACS.

Decision

At the end of the hearing, the judge will either make a **"finding"** of abuse or neglect against you, or find that ACS did not prove its case and **dismiss** the petition. If the case is dismissed, the case will be over and the children returned. If there is a finding made against you, the case will move to the dispositional phase.

DISPOSITIONAL PHASE

If your case is not dismissed after fact-finding, the case will go to the dispositional phase at which time the judge decides whether the children should stay in foster care or be returned to you. If there is an order of foster care placement, it is generally for a year although your attorney can argue why it should be a shorter time period. The judge should consider the steps you have taken to address any problems or to plan for the return of your children. Usually, the judge will order an I & R (Investigation and Report) after the fact-finding. This is a report prepared by ACS that recommends what should happen to your children. Make sure the ACS worker knows of any programs or services you are involved in so he can report about your progress.

Depending on your case, the judge may also order a mental health examination. This may be done by someone at the foster care agency or by the Mental Health Services at the Court. This evaluation will be called a **MHS (Mental Health Study)** or **FET (Full Evaluation Testing)**. You can expect that the examiner will ask you questions about your family background, your childhood and your current family situation. If you have been involved in any services, you should provide information about those services to the examiner. Provide names and numbers for counselors, getting letters of support, parenting class certificates, etc.

After the I & R is prepared, you will return to court, and ACS will state its position. Ask your lawyer what ACS is recommending. You can agree to the disposition they have suggested or ask for a hearing if you do not agree with ACS' recommendation. There is rarely a formal hearing about the disposition. Often parents' attorneys just argue why the plan should be different. You can help your attorney prepare for this stage by getting witnesses and letters of support as described above in the section on 1028 Hearings.

The dispositional order should contain your **visitation plan**. You should discuss with your lawyer whether it is better to try to get increased visits through the judge or through the agency. If you believe the agency will not be reasonable about visits, then you may want the judge to set a visitation schedule. You should also ask the judge to **order any services** you need to help reunite your family if the agency is not providing the services.

At disposition, the children may be **returned home to you under ACS supervision** or the children may remain in **foster care**. You may also want to advocate for the children to be **put into another person's custody**. If there are relatives who did not come forward initially, they may still be considered at disposition as a possible resource. This means that the judge may consider whether it would be in the children's best interests to live with the relative you are suggesting.

The dispositional order should also tell you what services you must comply with and inform you of your right to be notified of service planning conferences. Make sure you get a copy of the order. If you are not given one that day, then you can come back to court another day and go to the record room to get a copy of the order. You can also ask your attorney to provide you with a copy of the order.

THE AGENCY PROCESS

WHAT ARE YOUR RESPONSIBILITIES WHILE YOUR CHILDREN ARE IN FOSTER CARE?

- **Stay in contact with your worker.** Staying in touch with your Case Planner is considered "planning" for your children. Let the worker know if you move or change phone numbers. If you can't make a scheduled meeting with the Case Planner or will be late, call the Case Planner to let her know. Call the Case Planner to ask questions about your children's health and schooling, to find out when your service plan review will be, and to confirm scheduled visits.
- **Attend all visits with your children and maintain as much contact as possible with your children.** Visiting with your children on a regular basis is the best way you can show you are planning for their return. Try not to miss any scheduled visits unless there is an emergency. Try to call the Case Planner as soon as possible if you can't make a visit. Document the reasons why you miss any visits. If the agency or foster parents cancel visits with your children hold them to the same standard. Write a letter if necessary to your Case Planner and her supervisor if the Case Planner fails to provide reasonable explanations and notice when they've canceled your visit or if the Case Planner fails to reschedule visits they've canceled. Keep copies of these letters.
- **Attend service plan reviews and prepare for them in advance.** Attending service plan reviews and advocating for yourself is hard work and may be uncomfortable. However, this is where important decisions about your children are made.
- **Plan for your children's future.** This means that you must attempt to address the issues that led to your children's foster care placement. If you do not think that you will be able to get your children back quickly, you should be planning for them by thinking of relatives or friends who could care for them.
- **Follow through with your family service plan.** The family service plan should include tasks that the agency is supposed to complete and the tasks that you are supposed to complete. You are in a much better position to advocate with the agency when you have done what was agreed to at the service plan review. Ask for services you think you need or programs that will help you, such as parenting, family therapy, or classes on children with special needs. Taking initiative should help you in court.

"In my case, substance abuse led to my children being put into foster care. I had to admit to myself that I had a drug problem. That's when I was able to address the issues that led my children into care. I put myself into a residential drug program, which helped me to address my drug problem. I took parenting classes, so I can learn to be a better parent and learn to discipline them without putting my hands on them. I was also in therapy, and therapy helped me with the bigger issues that were suppressed, which led me to drugs in the first place. These are the things that I did in order to plan for my children's future."

WHAT IS THE AGENCY SUPPOSED TO BE DOING WHILE YOUR CHILDREN ARE IN FOSTER CARE?

These are the responsibilities the agency has to you and your children while they are in foster care:

- **Make diligent (or reasonable) efforts to help you maintain your relationship with your children.**

The agency has a legal obligation to help maintain your relationship with your children while they are in foster care. This means that they must help you get the services and other help you need to have your children returned to you. In addition, these services should be appropriate for you and your family. They cannot just refer you to any services. **See Appendix D for a list of services.** The agency must also arrange visits between you and your child.

- **Develop permanency planning goals for your children.**

When children enter foster care, the goal is almost always that the child will be returned to his or her parent (also called "reunification."). **The agency can change the goal from family reunification to another goal, so you should always know what your child's permanency goal is and advocate that reunification remain the goal.** The child's permanency goal is supposed to be discussed with you at your Service Plan Review. If you do not know what your child's permanency goal is now, ask your Case Planner to tell you. Although the agency decides the permanency goal, the goal must be reviewed in court by the judge at a permanency hearing. (This is discussed later in the section on permanency hearings.) However, it is much better to try to address these issues with the agency *before* you go to court.

Federal law requires that the agency have one of the following goals for your child:

- **Return to parent:** This goal, of course, means that the children will be returned to you. It is very important to try to obtain reunification before the goal is changed since there are legal time pressures to change the goal.

- **Terminate parental rights/free for adoption:** Your child's goal can be changed to termination of parental rights. The fact that the agency changes the goal does not mean that your rights will be terminated. The agency has to file a petition to terminate your parental rights in court and only the judge can decide whether your rights should be terminated. In addition, you can try to challenge the agency's decision to change the goal by advocating with the agency at your next service plan review or by disputing the goal change at your next permanency hearing in Family Court. (There is more information about termination of parental rights in the section called "Termination of Parental Rights Cases" at the end of this workbook)

- **Refer for legal guardianship:** Instead of being returned to you or being adopted by someone else, your child could be appointed a legal guardian who has full responsibility for your child. The person would have to file a guardianship petition in Family Court. This option is better for you than termination of parental rights because it means you can still see your children and that you may be able to get them back if things change at a later date. If there is a chance that your child's goal is going to be changed to termination, you may want to think about relatives or friends who have a relationship with your child and would be able to take on the responsibility of caring for the child. Keep in mind that ACS prefers that children be adopted rather than have a guardian because they believe that this is a more permanent goal for the child.

- **Permanent placement with a fit and willing relative:** This means that a relative would have legal custody of your child instead of the relative adopting the child or being the legal guardian. The person would have to file a custody petition in Family Court. For the same reason as guardianship, this is a better option for you than termination of parental rights, but again, ACS prefers adoption. ACS also believes it is better for the relative to be a guardian than a custodian since a guardian has more authority than a legal custodian.

- **Another permanent living arrangement:** According to ACS, this is the least preferred method of permanency planning for children and should only be the goal when none of the other ones are possible. This goal includes **independent living** (for children 16 and over who will be given services to be discharged on their own when they turn 18 or 21.) The law says that the teen has to request this goal. This arrangement is also made when the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents will raise the child until he or she turns 18 and will arrange visits with the parent.

- **Holding family service plan reviews (SPR) every six months.** When your children enter foster care, the agency must develop a family service plan to discuss the problems your family is facing and the services needed to overcome these problems. The first family service plan is supposed to be developed within 30 days after your child enters care. A **comprehensive** plan is supposed to be developed after 90 days. After that, the plan must be reviewed every six months at a case conference that you are supposed to be invited to.

The agency must write up the family service plan, along with a visiting plan, and a risk assessment (evaluating the risks to the child if returned home). These documents are called the Uniform Case Record or UCR. The UCR must be submitted to ACS on a regular basis and must be approved by ACS.

Who attends the SPR?

Your Case Planner should be there, and a supervisor may also be present. A "third-party reviewer" who does not work directly on your case is supposed to be present and to help by asking questions and keeping the focus on planning for the child. S/he should not just support the agency's position. Often ACS sends the Case Manager, who oversees that foster care agency's work. According to ACS, the Case Manager's role is to monitor the agency's progress and try to bring about a permanent home for the children as soon as possible. Children over 10 or foster parents are supposed to be invited but usually are not. Sometimes the agency will bring other personnel, like an administrator or a psychiatrist.

WHAT ARE YOUR RIGHTS REGARDING SERVICE PLAN REVIEWS?

- You have a right to be at the Service Plan Review. You are entitled to written notice of the date of the review and notice that you have a right to bring a person of your choice to the review. Your participation in these reviews is critical. In addition to participating in the review, you should prepare for the review beforehand so that you get the most out of the meeting. **See the section on self-advocacy below if you have not been invited to a Service Plan Review.** Foster parents and children over 10 also have the right to notice of the service plan review date.
- You have a right to a copy of the family service plan. The agency must give you a written copy of your service plan or, if you did not attend, a summary of what was discussed at the service plan review. You should be given a copy of the 90-day comprehensive service plan and all the six-month reviews after that. You should ask for it at the review. They may not give it to you at that time. If not, make sure you ask for it at a later time. If you do not have service plans from the past, ask your Case Planner for copies and write a follow up letter requesting them. Send a copy to the supervisor. **See Appendix E for a sample letter.**

Advocating for your self at Service Plan Reviews (SPR):

The first step in advocating for yourself at an SPR is by attending. If you cannot attend on the date the agency has selected, notify the Case Planner immediately and ask to reschedule. If you never received a written notice informing you of when the SPR would be held and your Case Planner calls you on Monday and tells you that your SPR is scheduled for later that day, or the next day, explain to the Case Planner that you have a right to get written notice of the SPR two weeks in advance and that the time is not good for you. If the Case Planner insists that they will hold the SPR, ask to speak with a supervisor. You may have to ask to speak with the director of the agency, but it is important that the agency give you enough notice so that you can attend your SPR. If they have the meeting without you, you can request a new meeting. It's also good to document in writing that you were not informed of the meeting, so they don't try to hold it against you that you did not attend. **See Appendix F for a sample letter you can use to request a conference.** Keep a copy of the letter you send.

Because the SPR is so important, you want to be prepared. There are several ways to prepare for your SPR:

- **Think about whom you want to attend with you.** You are entitled to bring somebody with you. You can invite your attorney, a drug treatment counselor, a friend, relative, or anybody who you feel will be helpful and supportive. Try to bring somebody who is familiar with your case and the efforts you have made to have your child returned.
- **Bring information about the programs you are in or have completed.** Bring a letter of progress or any completion certificates you have. If you are being drug tested and have a clean test results, bring those. Talk about any other accomplishments, such as attending a GED or job training program.
- **Prepare a list of things you want to discuss.** The SPR is a time to discuss the service plan for your family. You know your family better than anybody so you need to share with people at the SPR what services you think would be helpful. The SPR is also a time to discuss any problems you may be having with the foster family, or the Case Planner. You may want to write things down so that you don't forget anything.
- **Be ready to discuss your child's future.** The SPR will review your child's permanency goal, as described above. Find out the agency's plan and be prepared to explain the steps you have made toward reunification.

There are many things you can discuss during an SPR. For example, you may want to discuss:

- **Referrals to services for you and your family** – See Appendix D for information about the types of services you can request.
- **Your child's progress** – It is important to get information from the Case Planner about your child's schooling, medical care, and other activities. You can ask to see your child's report card, medical records, and his or her Individualized Education Plan (IEP), among other things. You may have creative ideas about how to be more involved in your child's life, like attending parent-teacher school conferences and medical appointments, or attending some of your child's therapy sessions. Once you get information about your child's progress, you may have ideas about services you believe your child needs. You may,

for example, want the agency to refer your child to an Early Intervention Program (EIP) or to therapy. The SPR is the time to ask for these services.

- **The amount and quality of visitation** – You can ask for more frequent visits, longer visits or unsupervised visits. You can ask that visits occur outside the agency for all or part of the visit. Reasons to expand visits include the success of current visits, children wanting more or unsupervised visits, and progress toward reunification. You may have creative ideas about how you and your child can have more contact, like supervising homework and preparing meals in the foster home, or attending school field trips. If the agency expresses concerns about the visits you have been having, it is important that you listen to what they have to say and try to address their concerns. A record of visits you have had is a useful tool when talking about expanding visits. **We have attached a sample visiting and contact log at Appendix G.**

- **The goals you must meet to have your children returned** – During the SPR, you can also learn about what the agency expects you to do to reunify with your children. If you disagree with something the agency expects you to do, this is the time to explain why. For example, the agency may tell you that they think you need to take a parenting skills class even though you have already completed two classes. Tell the agency about the two classes you completed and ask them to explain why you need to take another class. The agency may still insist that you need to take another class. You can agree or disagree. If you disagree, you may want to note your disagreement on the service plan when they ask you to sign. You may want to write that you agree with the service plan except for the part about taking another parenting skills class.

Whether you agree with the whole service plan or not, and whether or not you leave the agency with a copy of the service plan, you may want to write a follow-up letter that summarizes your understanding of the SPR. Be sure to date the letter and keep a copy for yourself. You may want to send a copy of that letter to the Case Planner and his/her supervisor, the ACS case manager, your attorney, and any other professionals who attended the SPR.

Here are some other tips for attending your SPR:

- **Before the SPR begins, ask that everybody introduce himself or herself and get their names and addresses.** There may be people at the SPR who you do not know (for example, the third party reviewer and ACS case manager). If you get the name and address of everybody who attends, it will be easier for you to send a follow-up letter to all of them.
- **Bring a pad of paper and pen to the SPR.** A lot will be discussed at the SPR. You may want to take notes. If many different topics are being covered in the SPR such as your child's education, therapy for you, therapy for your child, or visitation, you may want to summarize what was agreed to regarding each topic before a new one is discussed. Your notes may also be helpful if you decide to write a follow-up letter.
- **Listen to what others have to say.** You will be a much more effective advocate for yourself if you know the reasons why a decision is being made. The most important question you can ask is "why?" Why do you think I need to take a parenting skills class? Why can't my visits be unsupervised? Why do you think that my children and I don't have a bond?
- **Relax.** Very sensitive issues are discussed at the SPR. You may feel uncomfortable because there are people in the room who are judging you and may seem unfair. Losing control will hurt you in the long run. If you feel like you are going to start yelling or acting out, you may want to excuse yourself from the room and get a drink of water.
- **If your last SPR did not go well, you may want to request that some additional people attend the SPR.** You may want to request that the Case Planner's supervisor attend, that a parent advocate attend, or that somebody superior to the supervisor attend. While many of the people who attend the SPR may be intimidating or make you uncomfortable, remember that the SPR is your time to show how you have complied with services, to ask for other services that you think will help your family, and to learn about how your children are doing. This is about your family and you have the right to ask as many questions as you need to in order get the information you feel you need.

"My worker used to talk to me so badly, I would get furious. I used to curse her out, tellin' her she had no right talking to me the way she did. But what did she do? She wrote down, "Mother's unstable. No visit this week." Then she'd find new projects for me to complete. It took me six years to get my son back. Six years! I've seen so many parents give up. They get so tired of fighting with workers who treat them like they're the enemy – holding their children hostage. You can't give up though. Those are your children! No one is going to love them the way you do, no one! When you can't beat the enemy you have to join them. Do what you have to do and get your kids home."

WHAT OTHER RIGHTS SHOULD YOU KNOW ABOUT?

• Education

You have the right to know what is happening with your children's education. You may ask for report cards, assessments for special education, and meetings with your children's teachers. You can attend parent/teacher meetings unless there is a court order to prevent you from having this information or contact.

• Special Education

You have the right to be consulted before your child is placed in Special Education, and to participate in the decision-making process.

If the Board of Education wants to evaluate your child for special education, you have the right to say no. However, it is probably a good idea to agree to get an evaluation done to find out more about your child's educational needs and the reason for the school's concerns. If you prefer, you can arrange for an independent evaluation, done by a provider other than the Board of Education. Many hospitals and medical providers do educational evaluations. If you refuse to have your child evaluated, the Board of Education can choose to request a hearing and ask a hearing officer to override your decision.

If your child is evaluated, a meeting will be scheduled at the office of the Committee on Special Education in your district to discuss an education plan for your child. You have the right to attend this meeting, and to have it scheduled at a time when you can be present. You should ask to be provided with a copy of your child's evaluation in advance of this meeting. The purpose of the meeting is to determine what services your child needs, and to develop a document called an IEP (Individualized Education Program), which includes specific information about what programs are being recommended for your child, including strategies to help with any behavior

or learning problems your child may have. You have the right to participate in the meeting and voice your opinion about what services your child should receive. You also have the right to refuse to consent to Special Education.

After the meeting you will receive a notice telling you whether your child will be placed in Special Education or some other type of program and what services he or she will receive. If you disagree with the decision, you should respond by writing a letter to the Committee on Special Education in your district (where the IEP meeting took place). Keep a copy of the letter. If you tell the Committee in writing that you do not want them to place your child in Special Education, they may not legally do so. If you think your child needs different services than those being offered, you can request another IEP meeting or an impartial hearing. You should try to get letters or evaluations from teachers or other professionals showing what other services your child needs and submit this evidence at the meeting or hearing.

- **Medical**

You have the right to attend your children's medical appointments and to participate in their medical care unless the court orders say you cannot. You can ask your Case Planner about your children's medical health, medical care, and psychological health. A lot of parents complain that their children are being medicated without their consent. Unless there is an emergency, you should be consulted before medical treatment is given and before any medications are given to your children. If you are not, speak to the Case Planner, the doctor and your lawyer about your concerns.

"When my visits were supervised, I went to their medical appointments with their foster mother. Once I got unsupervised visits I took my children to their medical appointments. I also took them to school and picked them up, and did homework with them. I also took them to the park, movies and on trips. Of course I consulted with my Case Planner before I did these things. It helped that we had developed a relationship and that I was doing what they had required of me."

WHAT ARE YOUR RIGHTS TO VISITING AND STAY IN TOUCH WITH YOUR CHILDREN?

What the law says:

State law requires that at a minimum you and your children have visits every other week at the agency. Unfortunately, this is the standard amount of visits that most agencies provide to parents and their children. You know better than anyone how important visiting is to staying close to your children. As discussed in the next section, you have a right to request more visits and better visits. You should do so at Service Plan Reviews and whenever you can speak with your Case Planner and/or the supervisor. The agency should consider your schedule and your children's schedule when making a visiting plan. This means scheduling visits for times when you do not have to work or do other mandated services and when your children are not in school.

You must be given financial help, transportation, or other help necessary to enable biweekly visiting to happen. The agency is supposed to follow up with you if you miss a visit to make sure it doesn't happen again. The agency must arrange for visits to occur in a **private** and **comfortable** location.

"A lot of people don't know it, but when you start getting weekend visits with your children you can get additional help from Public Assistance. My Case Planner wrote a letter for me to take to Public Assistance verifying that I was having weekend visits with my children. They added to my budget for food assistance. You can get something like \$4 per day per child." See Appendix H for sample letter.

Agencies may not deny you visits with your children *unless they have a court order*. They must get a court order immediately if they are trying to stop your visits completely. The court can only deny visits if the visits would *place your children in danger*. This means that visits cannot be denied because you have failed to comply with services or some other directive of the agency. You have a right to have a hearing in court about this issue.

What ACS guidelines say:

In December 2000, ACS developed written guidelines for foster care agencies on arranging visits for children in foster care. See **Appendix C**. The guidelines can be very helpful to you in advocating for improved visiting with your children. You can refer to the basic principles of the guidelines below when advocating for improved visiting with your children:

- Your visits should be unsupervised unless the agency has a reason to supervise the visits. Visits should only be supervised if necessary to protect your child, to prevent your child's court testimony from being influenced or if a court orders the supervision. The agency can supervise some visits to assess your family interactions, but it does not have to supervise them all.
- If visits are supervised, the least amount of supervision necessary should be used. Unless your child is at serious risk of harm, the agency should not supervise your entire visit or interfere with your contact with your child, even during a supervised visit.
- Parents should visit with their children every week for at least two hours. ACS requires the agency to arrange for weekly two hour visits unless there is a reason not to do so.
- Visits should take place during your children's ordinary activities, such as at hair cutting, doctor or dentist appointments, sports games, shopping, and school plays.
- The agency should help you arrange to have other contact with your children, including phone calls and letters between visits. Ask your Case Planner if you can call the children or they can call you. It is very important to have contact between visits.
- The agency is supposed to develop your initial visiting schedule, increase your visits or change your visits from supervised to unsupervised visits without ACS approval. The agency plans your visiting schedule. It does not have to consult with ACS. Waiting for ACS approval should NEVER be a reason to postpone either an increase in visits or a change to unsupervised visits.
- The agency cannot decrease the amount of your visits without a court order or your written consent. The agency must ask a court to approve any decrease in your visits unless you agree in writing that you should have fewer visits with your children.
- Your children should be allowed to visit with each other and other people who are important in their lives. If your children are not placed in the same foster home, they have the right to visit with each other at least once every other week. The agency should also try to arrange visits with other people who are important to your children, even if those people are not relatives. You should tell the agency about people you think your children would want to visit. Your children can also tell the Case Planner.

- Your visits should increase over time in preparation for your children's return home. Visits should progress from weekly two hour visits to more frequent and longer visits, to day-long visits, to overnight and weekend visits, then to trial discharge and lastly, final discharge of your children. If the agency does not increase your visits during a six-month period, you should ask your Case Planner why you are not getting more visits.
- Your visiting plan should be reviewed at every Service Plan Review. The Service Plan Review is an important time to ask for more visits with your children and for an explanation if the visits are not increased. However, you do not have to wait until the SPR to ask for more visits. You can ask the caseworker at any time.
- You have the right to visit with your children even if the agency changes your children's permanency goal to adoption. You have the right to visit with your children unless and until your parental rights are terminated. It will be very difficult, however, to have the visits increased during this time.

"In my case I was tired of being unable to take my children to the park, store, movies, etc. I had been clean for 10 months already, so I felt that I should be allowed more time with my children and that my time should be unsupervised. I asked my social worker at my program to write a progress letter for me. I took the progress letter to court and petitioned for unsupervised visits and they were granted. Now I see my children daily. I'm able to take them to medical appointments; I take them to school and pick them up. I help with homework. I can take them anywhere I want, as long as I have them home at a reasonable time. Having a good relationship with your worker is very helpful in a situation like this, because when I mentioned to her that I was thinking of petitioning the court for unsupervised visits she supported me."

HOW DO YOU GET MORE VISITS?

Getting unsupervised and overnight visits with your child is the first, and most important, step in the process of bringing them home. If you have not been able to get the agency to agree to increase your visits or move from supervised to unsupervised visitation, and there is a long wait until the next court date, you should consider bringing the case to court. You can file a **petition to modify the dispositional order** entered by the judge at disposition or at the last permanency hearing. The dispositional order is the order that places your child in foster care but it also explains what the visiting plan for your family should be. You can bring your case back to court just for the purpose of asking the judge to change your family's visiting plan.

Before you go to court, ask the Case Planner why the agency will not increase your visits. If the worker has particular concerns about your family relationships, your children's behavior, or your readiness to have unsupervised visits, try to respond to her concerns by asking her to observe your family's interaction during agency visits and by gathering proof of your achievements since the last visitation order was entered. The same information that you use to try to convince the agency to support you will also be helpful when trying to convince the court. The more you can learn about why the agency doesn't support a change in visiting for your family, the better you can respond to their concerns.

WHAT IF THE AGENCY SAYS IT NEEDS A COURT ORDER?

You should show the Case Planner the ACS guidelines. If the worker is not convinced by the guidelines, ask to speak to a supervisor.

If the agency tells you that the judge said there can be no change in the level of supervision or the frequency of visitation without a court order, ask them if they would be willing to support your efforts to get an increase. The agency can support you by writing a report for the court that recommends increased and/or unsupervised visitation and that provides information about how visitation is going. If they are not willing to write a report but still support your position, tell your Case Planner the date your case will be heard and ask her to come to court to tell the judge that she recommends more visits for your family.

Once your petition is before the court, the judge will ask all of the parties if they agree that there should be more or unsupervised visits. If everyone agrees, the judge is likely to change the order, either ordering a specific plan for increased visits or giving the power to the foster care agency to decide how and when your visits with your child should be expanded. If everyone does not agree, the judge can hold a hearing to decide what the visiting plan should be for your family. Again, it is important to listen to the reasons why people are not supporting you so that you know what information you need to bring to court to address their concerns. Information can be the types of documents discussed above, like certificates and letters, or testimony from witnesses. For instance, maybe your counselor can come with you to court. If your counselor does come to court, the other lawyers will be able to ask her questions as well. Think about all of the different ways that you can show the court that you and your children are ready for more visits.

WHAT CAN YOU DO IF YOU THINK YOUR CHILDREN ARE BEING MISTREATED IN FOSTER CARE?

Suspecting that your children are not being treated properly in foster care (for example, finding bruises on them, or having them come to visits dirty or dressed inappropriately) is one of the most frustrating, nerve-wracking experiences a parent can have. It is particularly frustrating if you suspect that your child, who was placed in care on the premise that s/he was unsafe with you, is being mistreated by foster parents or group care staff. It can be hard to stay calm while dealing with this sort of situation, but there are definite steps that you can take:

- First, try to explain and share your concerns within the foster care agency. Go up the chain of command, first your Case Planner, then her supervisor, the foster care director, the Executive Director, as needed. Be prepared to document your concerns with specifics such as dates, witnesses, photos, etc. If you have an attorney, plan these actions with her. If you cannot get the problem solved to your satisfaction within the agency, there are further steps you can take:

- Call the ACS Parents' Rights Unit: (212) 676-9421. Be ready to document your concerns and to explain what has been your agency's response and why you are not satisfied with it. If you do not think ACS Parents' Rights Unit is taking you seriously enough, you can also make a report of suspected child abuse/neglect directly to the New York State Central Register (SCR): 1-800-342-3720. You have the option of doing this anonymously, but if you want SCR to follow up with you, you will need to tell them how to get back in touch with you.
- Contact your child's Law Guardian at the Legal Aid Society, ask your lawyer to, or have your child call herself, if she is old enough. If you are unsure who the Law Guardian is, call: (718) 237-3100 (Brooklyn); (212) 312-2260 (Manhattan); (718) 579-7900 (Bronx); (718) 298-8900 (Queens); and (718) 981-0219 (Staten Island). You need your child's name, date of birth and the mother's name to get the information.

"There was this one time I was going upstate to visit my son, and when he came down I noticed he had a long-sleeve shirt and a turtleneck. It was a hot day and when I asked him "why do you have on this hot shirt?" he kept trying to make excuses, but I persisted and convinced him to let me see. He had marks all over his neck and arms. I started to cry. I could not say anything. I took my son and went to see my caseworker. I asked "do you see this on my son?" She told me she had not been in his cottage in two days. I was very mad and upset. I said, "What are you going to do about this?" She said she would report it right away. When nothing came of her report, we made a plan together to look into it. My worker found out that my son was not the only child going through this. They got the guy who was hitting the kids, and they got him out of the agency. If this ever happens to you, please follow up. Don't let them make you feel as if you do not have any rights because you do, and you can use them to help your children."

PARENT SELF ADVOCACY

When you feel that you and your family are not being helped in the way you should be, or that you are not receiving services or information to which you have a right, your best strategy is to **advocate for yourself**. Advocating for yourself means knowing what your rights are and holding people responsible.

ADVOCATING FOR YOURSELF

"I did most of the footwork for myself. Before my kids were removed, my ACS worker found an outpatient drug treatment program for me. But I really needed an inpatient program. After my children were removed, I began to feel sick and tired of being sick and tired. I found a detox center on my own and talked to a counselor. I told him my story and that I really needed help. The first program I tried didn't work because I was pregnant, but eventually I received the help I needed to turn my life around at a mother and child program called La Casita. La Casita had childcare on site, counseling, therapy, social work, parenting classes, group therapy, and individual counseling. In La Casita I started to see the damage I'd been doing to my children and myself. The counselor I had was a recovering addict, so I opened up to her. She helped me to see that everything that I was going through reflected on my past and how it was a pattern that needed to be broken."

"I also advocated for myself in court, providing certificates to the judge showing all of the classes and treatment programs I had completed. I petitioned the court for unsupervised visits after I had 10 months clean in my program. The visits were granted."

HOW TO DEAL WITH ACS/AGENCY WORKER

The truth of the matter is that ACS and the foster care agency have a lot of power over your life and the lives of your children. You may feel that the agency workers are watching you as if you were under a microscope. Every contact you have with them and your child is being analyzed and documented. Getting your child back home may rely on your ability to show how level headed you are, especially if there have been any accusations of abuse. But you may be feeling anything but level headed. If you need to scream or cry, wait until you get home; don't lose control at the agency or in court. The more upset you get with or in front of people, the less likely they will be to believe that you can handle having your child returned to you. This can be a frustrating, infuriating and demeaning process. Since the workers are documenting all of their contacts with you, it is a very good idea for you to document the contacts too, through journals, visitation logs, and telephone logs that detail everything from

your point of view. See Appendix G for sample logs. Although it is best if you can develop relationships with your workers, if you feel that your rights are being violated, you should speak to your worker's supervisor. You can write letters regarding any problems and send a copy to the supervisor and to your lawyer. If necessary, continue to climb "up the ladder" to the supervisor of supervisors with your complaints if you feel your rights are being violated.

"Keep a book of when you go to court, when you go to your visits, what was said by the Case Planner. They keep a file on you. Everybody has a file on you from family court to the agency to ACS. You keep your own file. Keep your papers together. Get phone numbers. Don't be afraid to write to your worker's supervisor. Go all the way to the director if necessary"

"In my case, once I complied with what the workers wanted, everything fell into place for me. But I have seen other parents, who have done everything required, and they still can't seem to get anywhere with the agency. Sometimes you just have to bite your tongue and keep fighting. It doesn't help to get angry and sometimes it makes matters worse. They'll come up with something else for you to do. Just do the best you can and don't give up, have faith and keep trying. It helps to see the worker as another person trying to do their job to the best of their ability. They may not be well trained or may just be learning the system themselves. Sometimes it seems like they don't even like their jobs, or they may seem like they're just following orders of supervisors or judges. Some of them are not even parents, and may not know how hard it is. Sometimes it is hard to trust the workers, but if you can develop a relationship with your worker, it may help them see you as a responsible, respectful mother trying to care for your child as best you can. We're only human, just like them."

There are many different ways to advocate for yourself. The decision about what approach you take will depend on your past experiences, with the particular person you are dealing with, with strategies that have worked or not worked before, and your personality. Some people are comfortable demanding things in an assertive way and have found that approach effective in the past. Other people prefer to speak slowly and quietly and try to negotiate with others. Remember, the best way to advocate for yourself is to try a different strategy when one approach does not seem to be working.

The first thing you need to know in order to advocate for yourself is the agency's **chain of command**. Agency chain of command has to do with who has the power to make decisions. For example, your Case Planner must answer to his/her supervisor. The supervisor has to answer to somebody as well, perhaps a unit director or associate director. The Executive Director of the agency has the most power. It is important for you to find out about the power structure within the agency you are working with.

"It's always good to know the chain of command in case your worker is failing on her part. It's also good to build a relationship with the worker, even if you don't like her. That's what I did. Whenever I had questions, I would ask her. I wasn't afraid to ask or tell her any concerns I had."

WORKING WITH YOUR ATTORNEY

"My lawyer didn't try to get to know me. Didn't try to find out if I was guilty or innocent. Didn't call any of the people I knew who would have testified on what kind of mother I am or on how active I am in my community. I tried calling my lawyer, but that usually didn't work. I'd suggest that if your lawyer has an answering machine, instead of calling one or two times, call every five minutes until they call back. Write to her. Keep a copy. If she does not respond, send a letter to the Board that supervises those lawyers; get it certified so that you know it was received there."

Most parents find it difficult to share information with their attorney if s/he does not return their phone calls, does not take time to explain what is going on, or does not seem to be listening. Since your attorney is very important to your case, here is some information on how to make the best use of him/her:

- **Be sure to get your attorney's name and phone number.** Your attorney should give you a business card when you first meet. If s/he does not, be sure to ask for his/her name, phone, fax and cell phone numbers and address. **If all you know is your attorney's name**, you may still be able to find out his/her phone number. If a judge in Manhattan or Bronx Family Court appointed the attorney to you, you can call (212) 340-0598. Give them the name of your attorney, and they should be able to give you his/her contact information. If a judge in Queens, Brooklyn or Staten Island Family Court appointed the attorney to you, you can call (718) 875-1300. If s/he works for a Legal Services office, you can call (212) 431-7200. See Appendix B.
- **Keep in touch with your attorney.** If you call and s/he does not call you back, be persistent and call again.

- **If your attorney does not respond to phone calls, try contacting him/her another way.** You can write a letter requesting a meeting or sharing information about your case. If you know his/her fax number, you may want to fax the letter so that it will reach him/her faster. Whenever you send a letter to your attorney, be sure to date the letter and keep a copy for yourself. Sending letters to your attorney certified / return receipt requested ensures that s/he has information about your case even if you cannot speak on the phone or meet face-to-face before a court appearance. In addition, if you ever need to complain about your attorney, your letters can show that you tried to work with him/her. **See Appendix B.**

- **Arrange to meet with your attorney before important court appearances.** Ideally, you should arrange to meet with your attorney in his/her office several days before an important court appearance. Often attorneys will have parents meet them in court the same day they are scheduled to see the judge. Try to avoid this. The best way to avoid this is by getting in touch with your attorney well before the next court date, maybe a month before, to arrange a meeting in his/her office. Once you schedule a meeting, it is a good idea to confirm it before you go. You can do this by calling or sending a letter a few days before the meeting is scheduled.

- **Before court appearances make a list of important information, questions or concerns you have for your attorney.** If you are unable to speak or meet with him/her before your court date, bring to Family Court a list of things you want him/her to know and things you have questions about.

- **Get letters from treatment providers before going to court.** Often, the judge and other people involved in your case want to see documentation that you have completed or are participating in programs. When you know you have an upcoming court date, try to get documents from programs you are attending or have completed. For example, you may want to ask your therapist to write a letter that confirms that you regularly attend sessions. If you are going to ask a treatment provider to write a letter, be sure to do so well before the court date so that they can get the letter to you on time. Do not give copies of the letter to anybody until you have shown it to your attorney.

- **Send copies of important documents to your attorney.** Whenever you receive any papers from the court, ACS, or the foster care agency, keep one copy for yourself and mail a copy to your attorney. Whenever you get a certificate of completion from a program or a letter from a treatment provider, keep copies for yourself and mail a copy to your attorney. Always keep some copies with you in case someone misplaces the one you sent or someone shows up in court without the copies you sent them.

- **Bring extra copies of your important documents to court.** Whether or not you are able to mail copies of your important documents to your attorney, you may want to bring extra copies to court with you. Usually everybody involved in your case wants to see documentation that, for example, you completed a program. If you have completed a program or have gotten a letter of attendance from a program or therapist, you may want to give copies to the Case Planner.

- **Communicate your needs and listen to your attorney's response.** If you don't think that your attorney is doing as good of a job as s/he should be, you need to talk to your attorney about it. You might want to request a meeting and do so in person, or you might feel more comfortable writing your attorney a letter.

WHEN YOU CAN'T WORK WITH YOUR ATTORNEY

If you find that you simply cannot work with your attorney, because s/he does not return your calls, treats you rudely, does not take the time to answer your questions, or simply did not respond to your attempts to have him/her do a better job, you do have options. If s/he works for an office like Legal Services, you can ask to speak with his/her supervisor. You can explain to the supervisor all the reasons you think that you and your attorney are not working well together and request that your case be assigned to a new attorney. If you feel strongly that you want your case re-assigned and the supervisor is unwilling to do so, you can ask to speak with the supervisor's boss.

If your attorney is an 18-b attorney, there is no supervisor for you to make a complaint to. Instead, you need to make a complaint to the administrator who oversees the panel of attorneys available to be appointed by the court. **See Appendix B for information about where to write to make a complaint about an 18-b attorney.** The administrator may simply speak with your attorney and encourage him/her to change some behavior. (For example, the administrator may tell the attorney to make sure that s/he returns your calls promptly). Or, your complaint may be investigated, and the attorney may be disciplined.

However, the administrator cannot assign a new attorney to your case. Only the judge can do that. You can ask the judge to appoint you a new attorney. However, there are not a lot of attorneys who do this work, so there may not be another attorney for the judge to appoint. The judge also may not be willing to assign a second lawyer. In addition, keep in mind that a new attorney will not know anything about your case; s/he will have to start from scratch. A new attorney can mean further delays in your case.

You can also try to get a new attorney by calling the Legal Services office in your borough. **See Appendix B for the number.** You can also call SHIELD at (212) 626-6720. SHEILD is a program that is run by the Association of the Bar for the City of New York that provides some legal information and can sometimes find attorneys to represent people.

You may be so upset about your legal representation that you want to make a formal complaint. A formal complaint is a complaint that you can make to the Disciplinary Committee. To make a formal complaint, write to the Disciplinary Committee or Grievance Committee explaining the problem. A formal complaint will result in an investigation. If your attorney is found to have violated the ethics of the profession, s/he may be disciplined. **See Appendix B for addresses of the committees.**

WHEN ADVOCATING FOR YOURSELF IS NOT ENOUGH

There are some times where advocating alone will not be enough to achieve the result you hope to achieve. In those cases, you may want to get your attorney, the Law Guardian, or the court involved.

For example, the Case Planner was supposed to refer your child for therapy and has failed to do so. You followed all of the above steps, but still your child has not been referred for therapy. While you may want to continue working with your Case Planner's superiors and ACS to hold

the Case Planner responsible, you may also feel that it is really important that your child start therapy right away.

You may want to seek out a therapist for your child yourself. You can speak with other parents you know through the foster care agency, your child's teacher, your own therapist, or anybody else you can think of to identify a therapist for your child. You can then call to set up an appointment for intake. If your child lives in a foster home that is not in your neighborhood, you may want to try to locate an agency that is convenient for the foster parent.

Once you get an intake appointment, it is important that you make sure everybody who needs to know about it does. You should write a letter to the Case Planner, the supervisor, and the ACS case manager (if you know his/her contact information). Be sure that you explain why you made the appointment yourself. Include the date and time of the appointment, the name of the agency, its location and phone number, and the name of the person with whom you spoke.

You can take these same steps if the Case Planner was supposed to make a referral for you and failed to do so. While it is important that the Case Planner do his/her job and be held responsible, sometimes you don't have time to wait for things to get done. You may have to do some of the work yourself. Be sure to tell everybody involved in your case what services you have arranged.

Sometimes you might want to notify the Law Guardian when your child is not getting the services that you believe s/he needs. Not only may this result in your child getting what s/he needs, but it also demonstrates to the Law Guardian that you are concerned about your child's well being. **Always speak with your attorney first** before speaking with the Law Guardian. Remember: the Law Guardian represents your child, not you, and anything you say can be used against you in your case.