Children and Youth in Colorado Courts: Participation in Dependency and Neglect Proceedings

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I. INTRODUCTION

Each year, countless abused and neglected children and youth enter foster care in Colorado. Among the most disempowered members of society, they are removed from their homes – separated from the only life they have known – and placed in the care of strangers for the foreseeable future. Already in turmoil, their lives are turned upside down in an effort to prevent further harm. Prior to placement, their voices are silenced by the suffocating specter of abuse. Regrettably, on entry into the system, children and youth often remain invisible, rarely afforded the opportunity to speak for themselves and their distinct preferences in court. As a result, many of these same children and youth report feeling isolated and overlooked. In an effort to understand how exclusion from court proceedings affects displaced children, Home at Last and Children's Law Center in Los Angeles went straight to the source. The following are excerpts from a collection of poems authored by current and former foster children:[1]

> Decisions made for me, not respecting who I am….
> Paul, age 16
>
> All I want for my birthday is a voice…
> Krystin, age 12
>
> To The Judge – Listen to me, since no one else will…
> Antoinette, age 14

Numerous legal scholars and child welfare advocates have begun to recognize a troublesome parallel between the oppression that children/youth experience as a result of their abuse, and the continued stifling that may occur while in placement. As a result, child welfare and court professionals, including the National Council of Juvenile and Family Court Judges (NCJFCJ), are calling for increased participation of foster children/youth by way of inclusion in

[1] HOME AT LAST AND CHILDREN'S LAW CTR. IN L.A., MY VOICE, MY LIFE, MY FUTURE 7, 10, 13 (2006).

dependency and neglect proceedings.[2]

Pertaining to this issue and in collaboration with Office of the Child's Representative[3] (OCR), I have identified a deficiency in the Colorado child welfare system. Despite prevailing best practices research, which demonstrates that youth attendance at dependency and neglect (D&N) proceedings may serve their best interests, the rate of attendance is contradictorily low in Colorado. Furthermore, concerns about matters such as due process rights, youth preferences, and efficient use of limited state resources are implicated in this deficiency. For these reasons, Colorado must seek to improve youth participation and implement changes immediately to facilitate more meaningful youth involvement.

To support my thesis, I begin with a review of the literature that explores several interrelated areas. First, I discuss relevant components of federal law and the Colorado Children's Code, exploring the elements that purportedly facilitate youth attendance (i.e. youth consultation requirements, participation guidelines, etc.). Secondly, the rationale behind recent efforts to increase youth participation is presented. To assess the value of court attendance as a component of youth engagement, I investigate current social science research and analyze recommendations made by child welfare advocates for increased participation. Lastly, I examine best practices for youth participation and American Bar Association (ABA) Bench Cards, which contain recommendations for judicial engagement with youth (i.e. closed hearings, transportation policies, docketing practices, etc.). As a whole, this literature review serves as a basis for the ensuing quantitative research also reported here, which seeks to gather empirical evidence regarding attendance rates in Colorado, state participation policies, and stakeholder perceptions

[2] *See* ELIZABETH WHITNEY BARNES ET AL., NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS (2012).
[3] *See* C.R.S. § 13-91-102 (2013) (OCR is the agency in Colorado charged with the regulation and supervision of attorneys that provide legal representation to children in dependency and neglect proceedings).

about youth attendance. In its entirety, the evidence collected culminates in proposed improvements to the policies and procedures that govern child participation in Colorado dependency and neglect proceedings.

II. LEGAL STANDARDS

Inclusion of youth in D&N court proceedings is a concept that has only gained traction in recent years. Thus, the legal foundation for child attendance is incomplete and still evolving. Notably, however, the relationship between law and society is a cyclical one – evolution in societal values provokes change in the legal landscape, and new laws then influence further growth in society. Through this lens, the legal standards reported here are viewed.

A. Federal law

The NCJFCJ emphasizes that children of any age should be provided an opportunity to attend court, the only caveat being judicial officers may reasonably determine that attendance is inappropriate on a case-by-case basis where safety, maturity, or other practical concerns exist.[4] Furthermore, in 2006, Congress set a national legal standard for youth attendance in court proceedings with the enactment of the Child and Family Services Improvement Act (CFSIA). Accordingly, the CFSIA mandates that the court or any administrative agency involved in the creation and implementation of a "permanency or transition plan" must consult – before final disposition – "in an age-appropriate manner" with the child whose future will be determined by such a plan.[5] This provision of the act applies to any hearing involving youths transitioning from foster care to other permanent living arrangements. And though it does not directly address child attendance at dependency and neglect proceedings,[6] the Child Abuse Prevention and Treatment Act (CAPTA) acknowledges the value in presenting the child's perspective to the court.

[4] BARNES ET AL., *supra* note 3, at 4.
[5] 42 U.S.C. § 675(5)(C).
[6] *See* 42 U.S.C. § 5106a(b)(2)(B)(xiii) (the implementation of specific policy is left up to the states).

Originally enacted in 1974 and reauthorized in 2010, CAPTA sets forth mandatory provisions that state child protection plans must include in order to receive federal funding. For instance, any child who comes under the protection and authority of the judiciary as a result of abuse or neglect must be appointed a guardian ad litem (GAL) to represent his/her legal interests in court.[7] CAPTA goes on to describe the duties of GALs, among them "to obtain *first-hand*" [emphasis added] knowledge about each child's individual needs and circumstances, and to make recommendations to the court consistent with the child's "best interests."[8] To the extent that child participation in court proceedings is consistent with the "best-interests" principle, CAPTA, in essence, reinforces that standard.[9]

B. State law

Like CFSIA and CAPTA, Colorado law supports the child/youth participation principle in several ways. First, reinforcement is demonstrated by OCR itself, a state agency dedicated to addressing the unique legal interests of court involved children. Recognizing a need for increased oversight and guidance in D&N proceedings, the state legislature established OCR in 2001 to supervise the legal representation of children who have been identified as dependent and neglected. Corresponding to federal standards, OCR approaches its legal mandate in the context of "best interests." To that end, OCR seeks to establish minimum practice standards, provide enhanced training opportunities, litigation assistance, and oversight of legal professionals who represent children involved in the court system. Furthermore, the agency endorses youth participation and encourages GALs under its purview to bring children of all ages to court.

Currently, there is no specific *requirement* to allow child/youth attendance at D&N

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[7] *Id*.
[8] *Id*.
[9] *See* THE PEW COMM'N ON CHILDREN IN FOSTER CARE, FOSTERING THE FUTURE: SAFETY, PERMANENCE, AND WELL-BEING FOR CHILDREN IN FOSTER CARE, 42 (2004) (discussing federal guidance about child participation in court proceedings).

proceedings in the state of Colorado. However, there are provisions in the Colorado Children's Code that *promote and encourage* increased participation. These provisions are outlined in *Guided Reference in Dependency: An Advocacy Guide for Attorneys in Dependency Proceedings* ("the GRID"), a manual published by OCR and distributed to Colorado's GALs.[10] As enunciated in the GRID, Colorado law provides that children may address the court independently of the professionals appointed to represent them.[11] The GRID also identifies several additional elements of Colorado law that support child/youth participation, including the following:

> -notice [must be provided] to children of court hearings and…of the permanency hearing to set forth the constitutional and legal rights of the child, §§ 19-3-502(7) and 19-3-702(2);
> -when appropriate, children must be given an opportunity to participate in permanency planning hearings, and the court at a permanency planning hearing must consult with the child in an age-appropriate manner, §§ 19-3-702(2), (3.7); and
> -the participation and consent of a child over 12 years of age [is required] in matters concerning the child's adoption, § 19-5-2032(2).[12]

III. FEDERAL AND STATE AGENCY ENDORSEMENTS

In accordance with the law, an increasing number of federal and state agencies support the participation principle. Advocating in favor of child/youth participation, NCJFCJ urges D&N courts to adopt official policy addressing the issue,[13] and to facilitate attendance by "decid[ing] that children should be present at their dependency hearings."[14]

Concurrently, Pew Commission on Children in Foster Care (Pew Commission), (whose recommendations and research have been highly influential in child welfare across the nation), makes the following endorsement for child participation: "To safeguard children's best interests

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[10] OFFICE OF THE CHILD'S REPRESENTATIVE, OFFICE OF THE STATE COURT ADM'R, COURT IMPROVEMENT PROGRAM, GUIDED REFERENCE IN DEPENDENCY: AN ADVOCACY GUIDE FOR ATTORNEYS IN DEPENDENCY PROCEEDINGS, *available at*, http://coloradogrid.org/helperFiles/ColoradoGRIDebook.pdf.
[11] OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 11, at F30; *See* C.R.S. § 19-1-106(5).
[12] OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 11, at F30-F43.
[13] BARNES ET AL., *supra* note 3, at 11.
[14] *Id.* at 12.

in dependency court proceedings, children and their parents must have a direct voice in court."[15] And the ABA suggests that, more often than not, it is appropriate for children to be present during "significant court hearings," asserting that children have a right to "meaningful participation" in their cases.[16]

On a state level, OCR promotes child participation in permanency planning hearings - by way of the GRID – in the manner previously described. The agency further stresses child participation in other areas as well. As part of its mission to facilitate better outcomes for court involved children, the agency contracts with multidisciplinary law offices (MDLO) which offer not only legal representation, but also assign a social work professional to act as a case coordinator to supplement attorney services.[17] In its Statement of Work, section 3.2(h), the MDLO contract reads as follows: "The Child's Team, when appropriate, shall encourage the participation of the child or youth at court proceedings and staffings." And again in section 5.2(m), the contract expressly states that evaluation of MDLO performance will include an assessment of compliance with its directive for increased participation of children in D&N proceedings.[18]

IV. UNDERSTANDING THE TREND IN CHILD/YOUTH ATTENDANCE

While it may be significant to note that changes in the law, various agencies, and child welfare advocates support increased participation in court events, it is also important to document the reasons behind this somewhat recent shift in ideals.

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[15] *See* THE PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 10, at 18.
[16] *See* AM. BAR ASS'N, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, 11 (1996), *available at*, http://www.americanbar.org/content/dam/aba/administrative/child_law/repstandwhole.authcheckdam.pdf.
[17] *See* AMANDA DONNELLY, 15TH BI-ANNUAL ABA NAT'L CONFERENCE ON CHILDREN AND THE LAW, EFFECTIVE & EFFICIENT? AN EVALUATION OF MULTIDISCIPLINARY LAW OFFICES IN COLORADO, 3 (2013), *available at*, http://www.coloradochildrep.org/wp-content/uploads/2013/09/ABA-2013-Paper-An-Evaluation-of-Multidisciplinary-Law-Offices-in-Colorado.docx.pdf.
[18] *Id.* at 23.

A. On behalf of the child

The right of a child to effective legal representation in child welfare cases is uncontroverted. By state and federal mandate, courts are required to appoint a GAL, whose explicit role is to represent the child's best interests in court.[19] Though the child's wishes and the GAL's recommendations may ultimately conflict, determinations regarding best interests must be made only after consulting directly with the child "in a developmentally appropriate manner."[20] Subsequently, the child's preferences must be shared with the court "on all matters," irrespective of the GAL's conclusions.[21] Even so, no single individual is in a better position to express the child's wishes and desires than the child. Jaclyn Jean Jenkins, a 2008 Child and Family Advocacy Fellow at Hofstra and author of *Listen to Me,* emphasizes that the child possesses all the information and knowledge necessary to correctly state his/her position, and in doing so, may assist the judge in making a more informed determination.[22]

B. Liberty interests

Though a child's right to participate in D&N proceedings is not a constitutional right recognized by the Supreme Court,[23] Jenkins maintains there are "fundamental liberty issues" at stake in child welfare proceedings. A significant event that could sever family ties, result in disruptive relocation or culminate in forcible return to a dangerous environment, the court's decision will substantially impact a child's future.[24] Drawing a parallel to delinquency proceedings, where the accused child is legally entitled to attend because some of these same

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[19] *See* OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 11, at F37; C.R.S. § 19-1-111(1); C.R.S. § 19-3-203(1); *See* 42 U.S.C. § 5106a(b)(2)(B)(xiii).
[20] OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 11, at F38.
[21] *Id.*
[22] *See* Jaclyn Jean Jenkins, *Listen to Me! Empowering Youth and Courts through Increased Youth Participation in Dependency Hearings*, 46 FAM. CT. REV 163, 172 (2008).
[23] In re Gault, 387 U.S. 1 (1967) recognizes the rights of children to participate in delinquency proceedings, but only when commitment to a state institution may result; *See* Jenkins, *supra* note 23, at 167.
[24] *See* Jenkins, *supra* note 23, at 167.

potentialities exist, there is no just reason to hold parties in D&N matters to a lesser standard. And despite the absence of a legal mandate, a sense of fairness should compel courts to allow children to participate in their D&N hearings.[25]

C. Due process

Further support for child participation emerges in a study conducted by the Pew Commission. Through a grant provided by the Packard Foundation, the committee conducted a pilot study of three prominent judicial organizations to evaluate performance measures that were implemented in an effort to improve outcomes in child welfare cases.[26] Performance Measure 3 pertains to due process and basic protections extended to litigants:

> Due process refers to the right of *all* parties to participate in court proceedings [emphasis added]…giving each family the individual attention necessary to make effective decisions for the child and assuring that each *child* [emphasis added] receives due process...[27]

The goal of Performance Measure 3 includes allotment of individual time and attention to each case, meaningful access for families, and a corresponding opportunity to present their unique perspectives to the court. Though child attendance is not expressly denoted here, the agency later advocates for children to "have a direct voice in court," to be fully informed and to participate in the legal process, implying that children are deserving of the same due process afforded to parents.[28]

D. The right thing to do

In addition to direct input, liberty interests and due process, a review of the available literature illustrates a much more fundamental and straightforward reason for a shift in policy that would allow meaningful participation of abused and neglected children in the judicial

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[25] *Id*.
[26] *See* THE PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 10, at 59.
[27] *Id*. at 60.
[28] *Id*. at 41.

process. For some, recognizing a child's right to participate in legal proceedings that fundamentally change the course of their lives is, at its core, the "fair... [and] right thing to do."[29] In fact, the American Bar Association Center on Children and the Law asserts that providing children with the opportunity to participate directly in the process is a fair and appropriate course of action.[30]

V. BENEFITS

The benefits derived from child/youth participation in court are numerous and multidimensional. Children, their parents, the court, child welfare professionals, and society at large each stand to gain something of value when all parties in interest are included in the process.

A. Demonstrating someone cares enough to listen

The great majority of youth in foster care have experienced a lack of control in their lives. Having been subjected to the whims of a neglectful or abusive family member, they also frequently suffer from low self-esteem and feelings of inadequacy. By offering children the opportunity to express their preferences personally, the court may validate their position, imbuing them with a sense of appreciation and self-worth.[31] Moreover, due to the cyclical nature of physical and mental abuse, many of these children have inherited views from their families that the system is unjust and unfair. Through assisted participation, courts may combat the assumption that the system is discriminatory or biased.[32] As recent studies have shown, people

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[29] *See* Jenkins, *supra* note 23, at 174.
[30] *See* Leigh Goodmark, *From Property to Personhood*, 102 W. VA. L. REV. 237, 338 (1999). Goodmark explores the impact of domestic violence on children and the tendency of custody and visitation laws, as well as subsequent court decisions, to favor the parents and treat children as the property of their parents or as "chattel." *Id.* at 252. While Goodmark concentrates on children caught in custody battles between quarreling parents, the benefits of court participation also apply to children in the D&N context.
[31] *See* Jenkins, *supra* note 23, at 168.
[32] *Id.*

are more invested in procedural fairness than in the final outcome of a court case.[33] Of course, all parties certainly seek a favorable result, but a culminating loss is better received when the procedure is perceived as objective and impartial. Thus, fairness and honesty may eliminate feelings of distrust and fatalism about the system.[34]

B. Child/youth buy-in and consent

A fair process may also induce consent. While dispelling the notion that decisions are made arbitrarily on their behalf, granting youth the opportunity to make a statement may lead to a sense of buy-in about the process. Participants will be more informed, and they can ask questions if anything is unclear or they do not understand any part of the process.[35] Andrea Khoury, former Assistant Director of Child Welfare for the National Child Welfare Resource Center on Legal and Judicial Issues,[36] expands upon this idea, illustrating that youth gain a better understanding of what is happening to them, how decisions impact them, and why decisions are made when they participate in the proceedings.[37]

C. Awareness and acceptance

Attending hearings may also force youth to confront past abuse and accept an uncertain future – reuniting with their families may be out of the question, yet some youth maintain hope of returning home. Hearing a judge issue a ruling which negates that expectation lends a finality that may be easier to accept.[38] Discussing this aspect of participation, Khoury posits that

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[33] *See* KEVIN BURKE ET AL., PROCEDURAL FAIRNESS: A KEY INGREDIENT IN PUBLIC SATISFACTION, 14 (2007) *available at*, http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2BurkeLeben.pdf.
[34] *Id.*
[35] *Id.*
[36] National Child Welfare Resource Center on Legal and Judicial Issues is a project of the ABA Center on Children and the Law.
[37] *See* Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 CHILD L. PRAC. 145, 150 (2006).
[38] *See* Jenkins, *supra* note 23, at 169.

exposure "may be therapeutic."[39] Witnessing the proceedings, seeing and hearing directly from their caregivers or parents what they will or will not do, may force children to face a harsh reality, which may in turn open the door for faith in new alternatives.

D. Empowerment

The last, and perhaps most persuasive, of the benefits identified by previous research that youth may derive from direct participation is empowerment. When children are placed in foster care, decisions that fundamentally determine the course of their lives are made by strangers and an impersonal authority. The child's "ability to make decisions" is constrained by a precise, stringent set of rules, and what little agency youth may have enjoyed prior to placement is lost.[40] Moreover, the suffering caused by this loss is only exacerbated by separation from family, friends, and other familiar attachments. Acknowledging a child's right to participate in their court case may help address the deficit, offsetting an overwhelming "power imbalance," as Jenkins posits, by allowing him or her to feel some sense of control.[41] Khoury concurs, adding that when "the decision maker" – a judge or magistrate – demonstrates a willingness to listen to what youth have to say, they begin to feel more like collaborators of influence and less like they are being acted upon.[42] Furthermore, participation in the process teaches youth to self-advocate, a valuable life skill that will serve them well into the future.[43]

E. Advantages for the court

Courts may benefit from meaningful child participation, as well. Judicial offiers have a very limited amount of time to decide each case, and thus, to forever affect the future of children in foster care. Firsthand knowledge may provide guidance by putting a face to the file and

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[39] *See* Khoury, *supra* note 38, at 151.
[40] *Id*. at 150.
[41] *See* Jenkins, *supra* note 23, at 168.
[42] *See* Khoury, *supra* note 38, at 150.
[43] *See* Jenkins, *supra* note 23, at 169.

humanizing the process.[44] Furthermore, when children are consulted in an age-appropriate manner, they "are more invested in the process" and often demonstrate better compliance and commitment to achieving desirable outcomes.[45]

Seeing the victim in person may also force judges to focus on the needs of the child and not the parents, as "the gaze through which the judge views the proceedings" becomes more personal, distinct, and child-centered.[46] Theoretically, the judge will then be more apt to view circumstances through the eyes of the child, consider the specifics of the case and avoid stereotyping or one-size-fits-all rulings.[47] Moreover, if the court has lingering questions, the judge can ask them directly of the child, obtaining answers from the source.[48]

VI. COMMON OBJECTIONS TO ATTENDANCE

Despite the many advantages of youth participation in dependency courts, there are several legitimate concerns about potential disadvantages as well. Indeed, some opponents argue there are insurmountable obstacles to bringing youth to court.

A. Potential for causing new trauma to victims

Dependency proceedings are inherently emotional, and frequently adversarial. Consequently, hearings may be traumatic,[49] causing distress for young victims recovering from abuse. For instance, court examinations may include invasive questions about the parents and their behavior as well as their willingness to change and seek help. Thus, parent denials or resistance to opportunities for aid and support could adversely affect how the child perceives him/herself through their parents' eyes. As a result, children may come to feel their parents do

[44] *Id*. at 170.
[45] *Id*.
[46] *Id*.
[47] *See* Khoury, *supra* note 38, at 150.
[48] *Id*. Direct contact between the court and child may have the added benefit of providing checks-and-balances to ensure that reported information accurately reflects the circumstances. *Id*. at 151.
[49] Jenkins, *supra* note 23, at 171.

not care about them or that they do not love them enough to accept help.[50] Moreover, since the court is not obligated to grant the child's wishes, he/she may be severely disappointed if the judge issues a ruling contrary to his/her request.[51]

Nonetheless, the conflict and outright violence to which these children may have been exposed is, oftentimes, much more traumatic than anything that might occur in a court hearing. Importantly, the sensibilities of the average child are not those of youth who have lived through abuse and neglect. On the contrary, youngsters who make their way into the system as a result of severe maltreatment are much more jaded, experienced, resilient and streetwise than their peers. Regrettably, as Jenkins and others contend, they are already quite familiar with emotional stress. Inclusion in legal proceedings is not "[w]hat furthers their trauma," but rather the turmoil, confusion, and resentment associated with exclusion.[52] Quoting Chief Judge Judith Kaye of New York, Jenkins admonishes, for a child, "[w]hat greater trauma could there be than cataclysmic change in their lives without their knowledge?'[53]

B. Representation by proxy

Another common argument is that youth do not need to attend D&N hearings because their interests are already represented in court by someone else – a GAL, Court Appointed Special Advocate (CASA), parent, etc.[54] Nevertheless, it is important to remember that people who are appointed to speak for abused and neglected children bring with them their own opinions and biases, views which may color what they have to say, and which may also be inconsistent with what the child wants.[55] "Best-interests" principles may be found in nearly all

[50] *Id.*
[51] *See* Khoury, *supra* note 38, at 151.
[52] *See* Jenkins, *supra* note 23, at 172.
[53] *Id.*
[54] *Id.* at 171.
[55] *Id.*

child welfare literature – if representatives determine that what the child wants is not in his/her best interest, they may feel morally obliged to dismiss the child's wishes, and, in fact, may be professionally and ethically bound to recommend the opposite. While this practice is undoubtedly the correct course of action for the professional advocate, it also has the undesirable effect of silencing the child's voice.[56] Elaborating on the conflict that sometimes occurs between best-interests principles and representation of the child's wishes in court, Jenkins had this to say:

> Attorneys following a best-interests model of representation fall into… [a] trap. If a youth wants to return home, and the home is unsafe, the attorney advocating for the best interest of his or her client is bound to argue against the youth returning home, even if that is what the youth wants. Even if the child's attorney does present the child's view, and does so aggressively, the fact remains that the most forceful expression of that view would come from the person most affected: the child.[57]

Quite simply, the child is in the best position to express his/her own wishes and desires, and only he or she can provide all the information necessary for the court to make a fair and knowledgeable determination.[58]

C. Insufficient maturity

In addition to concerns about new trauma and existing representation, some professionals argue that child contributions mean very little because children lack good judgment and the maturity to formulate educated opinions. But scholars insist the opposite may be true:

> Studies have shown that children as young as 6 years of age have the capability to reason and understand…This is especially true for foster children, who, by necessity, have had to grow up more quickly then [sic] their peers.[59]

Furthermore, some individuals assert that children will not understand the proceedings, and thus

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[56] *Id.* at 172.
[57] *Id.*
[58] *See Id.*; Khoury, *supra* note 38; THE PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 10; BARNES ET AL., *supra* note 3.
[59] *See* Jenkins, *supra* note 23, at 173.

participation will not be meaningful.[60] However, professionals may neutralize any confusion by explaining the process to the child ahead of time, answering any questions openly and honestly, and allowing them to be present for as much of the proceedings as possible.[61] Likewise, some may feel, as Goodmark presumes, that "[c]hildren lack the…cognitive capacity to assess their own interests and to appreciate the consequences of their decisions, especially in the long-term."[62] However, Goodmark is quick to assert that, though children require safety and security, and indeed may lack the mature judgment necessary to accurately assess their own needs, empowerment and affirmation are also essential components of a healthy environment.[63] Thus, children/youth may benefit from recognition of their "personhood," despite their immaturity and underdeveloped sense of consequences.[64]

D. Administrative inconvenience

Another problem that emerges in discussions about youth participation is administrative inconvenience.[65] Issues that fall under this umbrella are, in fact, numerous. Namely, courts are not set up logistically to accommodate children in the courtroom – litigants often wait for extended periods for their cases to be called; children who may already be experiencing difficult academic challenges must miss school to attend court; there is nothing for children to do and they become bored; proceedings are difficult to understand, which causes frustration and aggravates boredom; and hearing from youth could slow down the proceedings in a system already bogged down with too much to do and too little time.[66] However, adjustments to each of these problems may be made, and the payoff is worth the expense. For instance, to address

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[60] *See* Khoury, *supra* note 38, at 151.
[61] *See Id.* at 151-152.
[62] *See* Goodmark, *supra* note 32, at 327.
[63] *Id.* at 330.
[64] *Id.* at 334.
[65] *See* Jenkins, *supra* note 23, at 171.
[66] *Id.* at 173; Khoury, *supra* note 38, at 151.

lengthy waiting periods and school absences, hearings may be scheduled at a time-certain when school is on break or after school hours. To minimize boredom and confusion, parties can avoid using acronyms and technical legal jargon.[67] And any inconvenience experienced by the court and others due to longer hearings is worth the cost if the pay-off is greater inclusion and empowerment of the child.[68]

E. Transportation, privacy rights, and no-contact orders

Additional objections to children in court include transportation deficiencies, concerns about the existence of a no-contact order between the accused and the child, and privacy rights of respondents who may not want their child to know the details of drug/alcohol abuse or other infractions[69]. Each of these issues carries substantial weight and is difficult to overcome. However, the literature illustrates that none of these concerns are insurmountable; each can be addressed effectively and efficiently in a myriad of ways.

a) Transportation difficulties

Transportation to and from court is a challenging matter, especially in rural jurisdictions where children may be placed in foster homes that are many miles from the courthouse. Resources are limited, and child welfare professionals are often spread too thin to take on the added responsibility of transporting youth to and from court. But transportation deficits can be overcome through the cooperation and careful planning of all parties to a case. And if professionals cannot be persuaded to collaborate in order to find creative solutions, courts can intervene with clever alternatives of their own. For instance, judges can order caseworkers, foster families, or GALs to bring children to court.[70] Or, following a precedent set by Presiding

[67] *See* Jenkins, *supra* note 23, at 173.
[68] *See* Khoury, *supra* note 38, at 151.
[69] BARNES ET AL., *supra* note 3, at 10.
[70] *See* BARNES ET AL., *supra* note 3, at 12.

Juvenile Judge Ann Gail Meinster in the First Judicial District, State of Colorado, courts can issue a judicial mandate expressly permitting CASA volunteers to transport children to court[71] (this would be in contravention of current practice, where transportation by volunteers is expressly disallowed in some jurisdictions).

b) Privacy rights and no-contact orders

Further complications arise due to privacy rights and no-contact orders. Respondents (or their attorneys) sometimes assert that having children present in the courtroom for D&N proceedings is a violation of their privacy.[72] After all, they may not want their children to know the full extent of repercussions brought about by the case. Further, because courtrooms are open to the public and there may be numerous spectators at any given time, some argue that the youths' right to privacy may be compromised if they are expected to stand in open court and testify about sensitive personal matters. Finally, D&N cases commonly include no-contact orders between respondent and child – having the youth appear necessarily disrupts that order for a time. In extreme cases, even a short disruption could raise safety concerns.[73]

Yet again, as with other obstacles to attendance, these issues can be overcome with a few arguably simple considerations. First, courts can protect the privacy of both parents and children, while simultaneously guarding the integrity of an existing no-contact order, by allowing *in camera* interviews (on the record and in the presence of the attorneys on the case in order to alleviate concerns about *ex parte* communications) or by limiting public access to the courtroom during youth testimony.[74] Alternatively, in lieu of a personal appearance, children could submit

[71] Presiding Juvenile Judge Order 2013-2, State of Colorado, First Judicial District, 2. ("The GAL and the caseworker shall be responsible for working with the treatment team to arrange for the child's/youth's transportation. CASA volunteers may be considered for transportation, even in cases where no CASA is assigned to the case.").
[72] BARNES ET AL., *supra* note 3, at 10.
[73] *See* Khoury at 4.
[74] *See* Khoury, *supra* note 38, at 152.

written or voice-recorded testimony for the judge's consideration, or perhaps participate by telephone. Lastly, the court might consider sending children to a waiting area during delicate or "harmful testimony," and allowing them back in the courtroom at a more appropriate time.[75]

F. Children do not want to attend

Finally, opponents of the recommended changes assert that children commonly do not want to attend court.[76] Yet, children frequently tell a different side of the story. Purportedly, they are often either unaware of proceedings or they do not know there are alternatives for addressing the court. As such, judges should ask why children are not in court and subsequently make a finding about the reasonableness of absences.[77]

VII. POLICY RECOMMENDATIONS

The preceding analysis demonstrates that, though there are significant obstacles to youth participation in court, there are reasonable and effective solutions to each under most circumstances. What is more, the benefits to be gained are extensive; so much so that courts and child welfare professionals are obliged to not only accept, but instigate meaningful participation in dependency court proceedings. Accordingly, various stakeholders in the child welfare system have compiled a comprehensive set of recommendations for policies and procedures that, if implemented, would facilitate increased youth participation. Notably, NCJFCJ, Pew Commission, Jenkins, Goodmark, and Khoury all make concurring recommendations. The following is a synopsis.

A. Presumption of attendance

A crucial first step is to adopt a common mindset, one that presumes youth participation

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[75] *Id*.
[76] *Id*.
[77] BARNES ET AL., *supra* note 3, at 12.

as the norm rather than the occasional exception to the rule.[78] Conceivably, this relatively novel approach could take the form of a mission statement, which should acknowledge empowerment, buy-in or other benefits that youth derive from participation. Better yet, states should codify the issue by passing legislation to ensure that youth have a legal right to attend court for D&N proceedings. And courts should hold professionals accountable for enforcing the standard by asking questions to determine why children are absent from their hearings, with a subsequent finding of reasonableness regarding any nonappearance. This element would foster routine compliance with youth attendance standards, while still allowing for absences under reasonable circumstances.[79]

With respect to reasonableness, judges should predetermine what constitutes a warranted absence from any court proceedings. If the child does not want to attend, as many insist is often the case, one suggestion is for courts to require a written statement from the child detailing the reasons why.[80] Or, if youth are disinclined to attend for fear of speaking in open court or having contact with the accused, judges should allow them the opportunity to speak *in camera* and in the presence of the attorneys on the case.[81] Alternatively, courts could allow youth to address the judge and express their wishes personally in ways other than a court appearance – videos or letters are viable options.[82]

B. Accommodation suggestions

Secondly, since the system is generally organized in such a manner as to hinder youth participation, courts should actively seek to establish accommodation policies. For instance,

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[78] *Id*.
[79] *See* Jenkins, *supra* note 23, at 164.
[80] *Id*.
[81] *See* Hon. Bobbe J. Bridge, *Involving Youth in the Dependency Court Process: The Washington State Experience*, 48 FAM. CT. REV 284, 288 (2010). (Concerns about *ex parte* communications may be addressed by recording the conversation and permitting lawyers for both sides to attend.)
[82] *See* Jenkins, *supra* note 23, at 164; BARNES ET AL., *supra* note 3, at 12-18.

judicial officers should receive training about how best to include children in hearings, and how to interact with them on an age-appropriate basis.[83]

a) Setting practices

Court protocols should support youth attendance by permitting after school hearings or settings during lengthy breaks from school. In the event youth cannot attend due to a conflict with school or other activities, courts should permit youth to have their say either by telephone appearance, via written submission, or through a previously recorded video.[84] Additionally, in order to better facilitate child participation, hearings should be set at a time-certain, which will minimize the amount of class time missed, cut down on the wait time, and eliminate or reduce the chances that the child will have unwanted contact with a parent or caregiver.

b) Notice and preparation

Another crucial element of accommodation is notice of hearings, which should be sent to youth well in advance, including information about the hearing as well as what to expect as a result of the proceedings. All professionals on a given case should be held responsible for transmitting this information.[85] In concert, a court-appointed representative (i.e. the GAL, caseworker, foster family, or CASA) should be required to assist in preparing children for court ahead of time with details about the hearing. Preparation might look different from case to case, but at minimum, should include an explanation of the process, an introduction to the parties present in conjunction with a description of their various roles, an outline of the child's options for addressing the court directly, and discussion of expected outcomes.[86] Educating children about the courtroom and its procedures in this manner will help ensure meaningful participation.

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[83] BARNES ET AL., at 12.
[84] *Id*.
[85] *Id*.
[86] *See* Jenkins, *supra* note 23, at 173.

An additional suggestion is to introduce children to the courtroom itself before they attend a hearing. A hands-on approach without the pressure and formality of a hearing – where children are permitted to wander about the courtroom freely, to "sit in the witness chair, touch and use the microphone, and observe where others will sit in the courtroom" – may be an effective strategy for placing them more at ease and reducing the anxiety associated with formal proceedings.[87] In like manner, professionals should consider introducing youth to the judge prior to attending a court hearing. Away from the bench and without the imposing black robe, a judge may become more human and less intimidating.[88]

c) Transportation requirements

As previously stated in this review, courts should designate a responsible party – a caseworker, foster family, or GAL – to make transportation arrangements for children and youth in D&N proceedings.[89] Getting to and from court is a significant obstacle – one that cannot be resolved without a specific plan for execution. If no single party is charged with the responsibility, the very real prospect exists that everyone will consider it someone else's job. And though professionals are the most likely candidates for such a duty, they do not have to be solely accountable for carrying it out. Indeed, Pew Commission specifically suggests improving transportation options by expanding the CASA program and permitting volunteers to bring children to and from court.[90] In Colorado and as formerly mentioned, the First Judicial District has already set a precedent for implementation of such a policy.[91]

d) Plain conversation and accessibility

Courts should also become "more youth friendly" by incorporating conversational

[87] *See* Goodmark, *supra* note 87, at 309.
[88] *Id.*
[89] *See* BARNES ET AL., *supra* note 3, at 12-18.
[90] *See* THE PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 10, at 43.
[91] *See* Presiding Juvenile Judge Order 2013-2, *supra* note 74, at 2

English into the proceedings and eliminating complicated legal jargon as well as the use of acronyms with which only legal professionals are familiar.[92] Importantly, children should be questioned in an age-appropriate manner. As an added precaution, judges could also explain the proceedings in real time to any youth present in the courtroom.[93] And Pew Commission recommends that courts should set up waiting rooms with books and activities, perhaps even including children's art on the walls.[94] These considerations may "make the process more accessible and meaningful for all participants," especially young people.[95] Lastly, children should be given regular breaks from lengthy proceedings and should be permitted to bring a supportive person to coach, encourage and explain.[96]

VIII. JUDICIAL BENCH CARDS

In support of recommendations found in the literature as previously outlined, the American Bar Association Center on Children and the Law has published Judicial Bench Cards to assist judges with "engaging" children in the courtroom. There are five bench cards, each geared toward a specific age group (i.e. Ages 0-12 mos., Ages 1-3 and 3-5, etc.), and which include recommendations consistent with the afore-mentioned. For instance, each card is based on a presumption of attendance, and endorses a practice of identifying the youth, if present, on the record. If the child/youth is not present, the cards further suggest methods for documenting – via Court Order – the reasons for the absence, including:

- Determine what efforts were made to accommodate and encourage the youth's attendance.
- Explore and encourage resolution of common reasons for nonattendance, including interference with school and transportation issues.

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[92] *See* Jenkins, *supra* note 23, at 173
[93] *Id*. at 174.
[94] *See* THE PEW COMM'N ON CHILDREN IN FOSTER CARE, *supra* note 10, at 42.
[95] *Id*. at 41-42.
[96] *See* Goodmark, *supra* note 87, at 315.

- In the absence of exceptional circumstances, postpone the hearing until the youth can be present.[97]

Furthermore, the bench cards include recommendations such as avoidance of technical legal jargon throughout proceedings, *in camera* interviews, allowing children to be accompanied by a support person, and keeping local school district calendars on the bench for reference when setting future hearings.

IX. ISSUES FOR FURTHER RESEARCH

As the preceding review of the literature demonstrates, the opportunity to attend and participate in D&N proceedings brings with it substantial benefits, both to children and youth and to those charged with determining the course of a child's future. Nevertheless, circumstantial evidence seems to indicate, among Colorado child welfare professionals, a dominant perception that child/youth attendance rates in the state's D&N proceedings are below an acceptable standard. Based on the foregoing, OCR has initiated efforts to improve youth attendance rates in furtherance of its agency mission "to provide competent and effective legal representation to Colorado's children involved in the court system . . ."[98] As such, to the extent possible, it is necessary to quantitatively define current attendance rates, and to articulate an

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[97] *See* AM. BAR ASS'N ON CHILDREN AND THE LAW, JUDICIAL BENCH CARD, ENGAGING YOUNG CHILDREN (AGES 0-12 MO) IN THE COURTROOM (2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/hasten_youngchild.authceckdam.pdf; AM. BAR ASS'N ON CHILDREN AND THE LAW, JUDICIAL BENCH CARD, ENGAGING TODDLERS (AGES 1-3) & PRESCHOOLERS (AGES 3-5) IN THE COURTROOM (2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/hasten_toddler.authcheckdam.pdf; AM. BAR ASS'N ON CHILDREN AND THE LAW, JUDICIAL BENCH CARD, ENGAGING SCHOOL-AGE CHILDREN (AGES 5-11) IN THE COURTROOM (2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/hasten_schoolage.authcheckdam.pdf; AM. BAR ASS'N ON CHILDREN AND THE LAW, JUDICIAL BENCH CARD, ENGAGING ADOLESCENTS (AGES 12-15) IN THE COURTROOM (2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/hasten_adolescent.authcheckdam.pdf; AM. BAR ASS'N ON CHILDREN AND THE LAW, JUDICIAL BENCH CARD, ENGAGING OLDER ADOLESCENTS (AGES 16+) IN THE COURTROOM (2008), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/hasten_older.authcheckdam.pdf.

[98] About OCR, http://www.coloradochildrep.org/about-ocr/ (last visited March 15, 2014).-

appropriate goal for improved attendance.

Likewise, presumptions abound about the reasons behind seemingly low attendance rates, but there is little empirical evidence to support such theories as they relate specifically to Colorado. Thus, it is necessary to investigate this aspect of D&N proceedings in the state's district courts more fully. To that end, the following critical areas will be investigated: an evaluation of the district plans for handling D&N cases in each Colorado judicial district with specific elements categorized; beliefs about benefits/impediments to attendance among child welfare professionals in the state; and possible reasons why attendance rates and the policies surrounding them may be less than adequate. The question explored in this research is twofold: Based on an analysis of the information collected, do current state judicial district plans facilitate/support child and youth attendance at D&N proceedings in Colorado? If not, what recommendations can be made regarding best practices for engaging children and youth and what policy changes might be proposed to promote those practices?

X. METHOD

To help answer these questions, I sought to establish current attendance rates, identified published policies and practices of individual judicial districts, determined procedural consistency with relevant state law, and conducted a survey of various stakeholders in the state's child welfare system in an attempt to identify perceptions, biases and perhaps unpublished policies.

A. Attendance rates

Unfortunately, child and youth attendance at most D&N proceedings is not, at present, routinely tracked. One might presume the reason behind this omission is that attendance at court events has only recently become a priority. At any rate, the information available is

predominantly anecdotal and based on the observations of professionals who spend time in court on these cases. Collectively, they report that youth simply do not attend. The one set of data that is available tracks only the Permanency Planning (PP) hearing, and only for children 12 and older, which is based on the statutory requirement previously noted – youth in that age group must be permitted to participate in PP hearings at which the court must "consult with the child in an age-appropriate manner."[99] This report includes an analysis of that data, which is gathered annually by OCR.

B. Judicial district policies and procedures

Next, to help identify the reasons behind inadequate participation, it was necessary to evaluate published judicial district policies and procedures for processing D&N cases. Ideally, individual district policies should include at least some of the recommendations for increasing attendance, as previously outlined in this report. As such, published policies were evaluated for the following critical elements: presumption of attendance, accommodation provisions (i.e. setting practices, alternatives to in-person appearances, waiting rooms, etc.), notice and preparation obligations, and transportation requirements. The data gathered from this analysis informs a comparison of available attendance rates to procedural guidelines. It was presumed that attendance would be higher in districts with the most comprehensive plans and very low where an underdeveloped or no policy exists. However, owing to incomplete attendance data, this comparison is limited in value.

C. Stakeholder survey

Lastly, a survey was conducted to assess awareness of the issue, current practices, perceived benefits and impediments to youth participation, and to determine jurisdictional and individual courtroom compliance with existing district policy. In the absence of established

[99] OFFICE OF THE CHILD'S REPRESENTATIVE, *supra* note 11, at F30-F43.

district guidelines, the research further seeks to ascertain whether procedures have been implemented by individual family court judges to facilitate youth attendance and to identify the prevailing judicial viewpoint regarding same.

Although the study population includes human subjects, none of the named stakeholders are members of a potentially vulnerable population. They are professionally trained, well-educated participants in the child welfare system, identified as meaningful participants in the survey due to their central roles in D&N proceedings.

a) Study Population

The following is a list of the seven identified stakeholder groups who complete the distribution list, including a synopsis of their roles in the system:

- judicial officers – judges and magistrates whose authority to make decisions about youth placement may be significantly influenced by youth attendance;
- *guardians ad litem* (GALs) – attorneys who are appointed by the state to provide legal representation of children in D&N proceedings, and thus have a great deal of influence in youth attendance;
- CASA volunteers – Court Appointed Special Advocates who, representing only one child or family at any given time, provide reports and information to the presiding judge and other case professionals related to the child's best interests;
- Colorado Department of Human Services (CDHS) – caseworkers who make influential decisions and Court recommendations about child/youth placement and family services;
- Respondent Parents' Counsel (RPCs) – court-appointed attorneys who represent the legal rights of parents in D&N proceedings and who may offer a valuable perspective on youth attendance; and
- County attorneys – legal representatives of individual counties and CDHS, who may also offer an important perspective on youth attendance.

b) Recruitment and consent

The web-based survey was created and administered by OCR using SurveyMonkey, and was conducted via email. The agency was responsible for distribution and collection of responses from various stakeholder groups, and requested participation with a personal invitation written

by the agency's Executive Director, Linda Weinerman.[100] Distribution occurred in several ways. Along with a link to the survey, the invitation was emailed to Colorado GALs utilizing a listserv maintained by OCR as the state agency charged with the supervision of child legal representatives in D&N cases.[101] The same invitation and survey link was emailed to the RPC coordinator at the State Court Administrator's Office, who forwarded it to the RPC listserv. OCR also maintains a contact list of District Court Administrators, CASA Directors, CDHS Directors, and County Attorneys. These contact lists were used to distribute the invitation and survey to each of those groups. In turn, District Court Administrators were asked to forward it to judicial officers who handle D&N matters. CASA Directors were asked to distribute it to CASA volunteers, and CDHS Directors in each county were asked to forward the participation request to caseworkers. For those individuals directly contacted, OCR tracked the total number of invitations. For all of those individuals not directly contacted by OCR (through administrators, etc.), those in charge of distribution were asked to report the total number of invitations sent.

The attached Informed Consent Form was the first page study participants encountered upon clicking the survey link embedded in the email invitation.[102] Informed consent was obtained by participant completion of the survey, which is clearly indicated at the bottom of the page in bold using the following language:

> If you understand and agree to the above, please select "I understand and agree to the above," indicating your consent to participate in this study. If you do not understand any part of the above, please contact the researcher with questions.

Following these statements, clicking on "I understand and agree to the above" provided access to the survey. Alternatively, if participants clicked on the option "I do not understand and agree to the above," the survey was terminated. No signatures were collected for informed consent,

[100] The approved invitation is attached as Appendix A.
[101] *See* C.R.S. § 13-91-101.
[102] The Informed Consent Form is attached as Appendix B.

because participation was anonymous and identifying information was not recorded.

Participants accessed a brief online survey[103] in February 2014, which took approximately 5 minutes to complete. Data was collected using survey responses only, and have been analyzed quantitatively based on the number of identical or similar responses. Reports showing the exact numbers were generated through features in the SurveyMonkey software, and informative spreadsheets and graphs were subsequently produced by the researcher. Participants were contacted by email midway through the 10-day survey period with a brief reminder. There was no further contact with participants.

d) Questions

The topics covered in the survey include the following:

- the appropriate age children/youth should attend D&N proceedings
- child/youth ability to attend court and participate in D&N proceedings
- how the Court consults with children/youth who do participate
- child/youth preparation, notification, and transportation provisions
- impediments to child/youth participation
- benefits to child/youth participation
- district policy/plans re: attendance/participation
- steps taken in individual districts to facilitate attendance/participation
- concerns about child/youth participation

The final report generated from responses to these questions provides an overview of what is happening in CO judicial districts based on an analysis of the information collected (actual attendance, comparing district policies to practices, identifying themes in perceptions, etc.). In addition, I have included recommendations regarding best practices for engaging youth and proposed policy changes to support those practices. Some of these are immediately actionable; for those suggestions that require further information, I have also made recommendations for additional research.

[103] See attached Addendum C for survey questions

XI. ETHICAL CONCERNS

A. Anonymity and confidentiality

The survey was designed to collect only anonymous responses, identified strictly by code number. The IP addresses of computers used to complete the survey were untraceable, and researchers did not have access to respondents' individual data. Any reports generated as a result of this study are described in the aggregate, using group averages and general statements about how and when children/youth are participating in D&N hearings. The survey administrator at OCR created the reports from the agency database, and this individual is the only person with access to the original data. The reports have been downloaded and saved to OCR's secure server, which will be kept indefinitely as the agency is subject to the Colorado Open Records Act (CORA).[104] Pursuant to CORA, responses are anonymous, but not confidential. Results will be published and open to public access. Should any information contained in this study be the subject of a court order or lawful subpoena, the University of Denver and OCR might not be able to avoid compliance with the order or subpoena.

Individuals were contacted based on their professional role in child welfare cases; therefore, their names and contact information may be publicly available. However, OCR's contact lists are kept on a password protected office network, which is stored on a secure server.

B. Risks

Participation in this study was strictly voluntary, and the associated risks are negligible. Contributors were asked to complete an online survey consisting of multiple choice questions and three open-ended response questions. As previously noted, respondents were assured that the survey could be discontinued at any time if they experienced discomfort. Refusal to participate or withdrawal from participation involved no penalty or loss of benefits to which participants are

[104] *See* C.R.S. §§ 24-72-201, 24-72-309.

otherwise entitled.

There are no physical, legal or economic risks associated with participation in this study. The only inconvenience imposed on respondents was the minimal time required to complete the survey, approximately 5 minutes. Any additional discomfort respondents may have felt (i.e. repercussions from responses that may reflect poorly on individual Courts) were assuaged by the anonymity of their responses.

C. Benefits to subject or future benefits

Stakeholders and society at large may benefit from this study as results and analysis lead to actionable recommendations for increased child/youth participation in D&N proceedings. OCR intends to use this research for precisely that purpose, accepting the proposition that increased participation will lead to more informed Courts, child/youth empowerment and buy-in regarding decisions about their future, and better information for other stakeholders in the child welfare system who are charged with placement and protection of abused and neglected children.

XII. QUANTITATIVE RESEARCH RESULTS

A. Attendance data

For the most part, quantifiable statistics pertaining to child/youth attendance at D&N proceedings in Colorado do not exist. Whatever the reason, courts do not routinely document this information. Through supposition, one might conclude that attendance has not been previously identified as a matter of consequence, which in and of itself provides a clue about why attendance is low in Colorado. This possibility must be considered in conjunction with other information collected.

Since available data is insufficient, this research relies on circumstantial evidence to determine overall attendance rates. In part, this is accomplished by analyzing the limited

information that is accessible, which pertains only to youth 12 and older, and only to the PP hearing. To reiterate, the court is obligated by statute to "consult" with any youth aged 12 or older in an "age-appropriate manner" regarding his or her permanency plan. .[105] This information is gathered by OCR through the Colorado Attorney Reimbursement and Expense System (CARES), an on-line case management and billing system, which is utilized by Colorado GALs and other child legal representatives who are required to report their case activity. OCR has access to all CARES information, excluding attorney work product. Such access allows OCR to confirm compliance with Chief Justice Directives, Performance Requirements, and to track trends for each jurisdiction.

The Permanency Planning Hearing Report, obtained through CARES data, reflects the total number of Permanency Planning Hearings held in fiscal year 2013 (July 1, 2012 through June 30, 2013) involving children age 12 and older, and whether the child was present at the hearing or not. For the purposes of this report, "hearing" is calculated by child rather than by case number. For example, a hearing involving two children over the age of 12 is counted as two hearings. The data is summarized by Judicial District.

According to the CARES report, across Colorado, children age 12 and older participated in 40.65% of the PP hearings held for all youth aged 12 and older in fiscal year 2013 (FY13) (See Table 1 below for overall data). This number would indicate that efforts to increase participation in permanency planning have been moderately successful. However, a closer examination is required to put this figure in context.

In some jurisdictions, attendance rates are better in one county than another. For instance, in Judicial District 17 (JD17), which consists of two counties – Adams and Broomfield – the number of children age 12 and over who attended their PP hearings in FY13 were vastly

[105] *See* C.R.S. §§ 19-3-702(2), (3.7).

different from one county to the next. In Adams County, attendance peaked at only 14.69%, while Broomfield County attendance rates reached 100%. A thorough examination, however, reveals that the number of PP hearings conducted in Broomfield during FY13 amounted to only 7, while those in Adams totaled 143. In fact, in 13 out of 50 counties, where the number of PP hearings conducted was relatively few – no more than 8 – attendance reached a highpoint of 100% (see rows highlighted in yellow, Table 1). Furthermore, only 7 additional counties reported attendance rates of 50% or more, and the total number of PP hearings conducted in 6 out of 7 of those instances is no more than 14 (see data shown in red, Table 1). The remaining 30 counties reported lower than 50% attendance rates.

Table 1:

Permanency Planning Hearings by County
FY13 Report

Hearings Involving One Child
Age 12 or Older

County	Total Hearings	Not Present	% Present
01 - Gilpin	2	0	0.00%
01 - Jefferson	300	111	37.00%
02 - Denver	1	0	0.00%
02 - Denver	417	197	47.24%
03 - Las Animas	5	2	40.00%
04 - El Paso	356	168	47.19%
04 - Teller	15	3	20.00%
05 - Clear Creek	7	2	28.57%
05 - Eagle	3	0	0.00%
05 - Lake	2	2	100.00%
06 - Archuleta	1	0	0.00%
06 - La Plata	6	2	33.33%
07 - Delta	19	8	42.11%
07 - Gunnison	1	1	100.00%
07 - Montrose	27	8	29.63%
07 - Ouray	1	0	0.00%
07 - San Miguel	1	1	100.00%
08 - Larimer	67	35	52.24%
09 - Garfield	14	9	64.29%
09 - Pitkin	1	0	0.00%
09 - Rio Blanco	3	1	33.33%
10 - Pueblo	20	5	25.00%
11 - Chafee	1	1	100.00%
11 - Fremont	39	15	38.46%
12 - Alamosa	15	7	46.67%
12 - Conejos	10	8	80.00%
12 - Costilla	1	1	100.00%
12 - Rio Grande	5	2	40.00%
12 - Saguache	8	8	100.00%
13 - Logan	3	0	0.00%
13 - Morgan	22	3	13.64%
13 - Phillips	1	1	100.00%
13 - Sedgwick	1	1	100.00%
13 - Washington	9	3	33.33%
13 - Yuma	2	1	50.00%
14 - Grand	3	2	66.67%
14 - Moffat	5	5	100.00%
14 - Routt	1	1	100.00%
15 - Kiowa	2	1	50.00%
16 - Otero	1	1	100.00%
17 - Adams	143	21	14.69%
17 - Broomfield	7	7	100.00%
18 - Arapahoe	216	86	39.81%
18 - Douglas	25	7	28.00%
18 - Elbert	20	7	35.00%
18 - Lincoln	2	1	50.00%
19 - Weld	34	9	26.47%
20 - Boulder	55	17	30.91%
21 - Mesa	38	15	39.47%
22 - Montezuma	3	3	100.00%
TOTALS	1941	789	40.65%

Still, this type of analysis reveals an incomplete picture. When county data is combined with the entire district, only 7 out of 22 reported an attendance rate of 50% or more. Moreover, the highest number of PP hearings conducted in these districts is comparatively few – only 67 (see data highlighted in blue, Table 2 below). In contrast, the highest number of hearings conducted in the remaining districts is 418, with an attendance rate of 47.13% (see data shown in green, Table 2 below). The bottom line is, in districts where there are large numbers of PP hearings conducted throughout the year, attendance falls dramatically, whereas districts which conduct fewer hearings generally report high rates of attendance. In this context, several questions arise. Are districts with fewer hearings more accommodating to youth participation? How do policies and procedures in these districts differ from those where more hearings occur? Furthermore, why are some county numbers so drastically different from its neighbor(s) in the same district?

Table 2:

Permanency Planning Hearings by District FY13 Report

Hearings Involving One Child Age 12 or Older

District	Total Hearings	Not Present	% Present
01	302	111	36.75%
02	418	197	47.13%
03	5	2	40.00%
04	371	171	46.09%
05	12	4	33.33%
06	7	2	28.57%
07	49	18	36.73%
08	67	35	52.24%
09	18	10	55.56%
10	20	5	25.00%
11	40	16	40.00%
12	39	26	66.67%
13	38	9	23.68%
14	9	8	88.89%
15	2	1	50.00%
16	1	1	100.00%
17	150	28	18.67%
18	263	101	38.40%
19	34	9	26.47%
20	55	17	30.91%
21	38	15	39.47%
22	3	3	100.00%
TOTALS	1941	789	40.65%

The answers to these queries cannot be determined from the research reported thus far. Firstly, the data is difficult to analyze due to a large variance in the number of hearings conducted in each district. One cannot compare a jurisdiction that conducted only 1 or 2 hearings in an entire year with another where hundreds of hearings took place. Secondly, the population and square footage of each district has not been accounted for – in very large or rural districts, the distance traveled between foster homes and the courthouse may be significantly farther than in others where the population resides within a smaller radius. Moreover, large districts with cumbersome caseloads may be understaffed, while those with more manageable caseloads also enjoy more adequate team resources. Third, the only data reported here is for FY13 – an accurate assessment would necessarily compare data from several years in order to establish consistency and determine upward or downward trends. And lastly, there may be legitimate reasons for nonattendance in some instances that are not described in the CARES reports, (i.e. the GAL arranged for an *in camera* interview with the child prior to the court hearing or the child submitted a letter to the court). If alternatives for in-person participation are determined to be an acceptable form of participation, the data must account for that contingency, as well.

Nonetheless, it is clear that attendance at PP hearings in Colorado, a mere 40.65%, remains below an acceptable standard. To be in compliance with best-interests standards as previously outlined, a goal of 100% attendance must be the gold standard. Yet, even under statutory obligation, just over 40% of eligible youth attended their hearings in FY13. If additional data were available, attendance for all age groups at D&N proceedings – where no such legal requirement exists – would undoubtedly be much lower.

B. Judicial district policies & procedures

The first step toward increasing child/youth participation in Colorado D&N proceedings

is for each judicial district to develop a comprehensive policy regarding attendance and participation. Thus, the next phase of my research includes an analysis of published judicial district policies and procedures for processing D&N cases in Colorado. This evaluation consists of a number of elements.[106] First, I have identified existing plans for individual districts and ascertained whether a written attendance policy exists. Each plan was then evaluated to determine if recommendations for facilitated youth participation as outlined in the preceding literature review have been incorporated. These elements include a statement of philosophy regarding child/youth participation, presumption of attendance, and accommodation suggestions such as setting practices, notice and preparation, transportation requirements, limited use of legal jargon, etc. In turn, these official policies and procedures have been compared to the actual attendance rates reported above in order to establish a possible connection between the two. Theoretically, in those districts where an attendance policy exists, and in those that have implemented at least some of the recommendations (because no district incorporates all), there should be a demonstrable increase in attendance.

a) Evaluating existing written policy

In the course of this study, numerous unsettling deficiencies were revealed. The findings are reported below.

First and foremost, there is no consistent plan across Colorado judicial districts. This lack of consistency is problematic, and could lead to confusion or misinterpretation, especially for GALs assigned to cases in more than one district. Moreover, some jurisdictions have no published policy at all, or the plans are grossly out-of-date as illustrated by the following:

- 3 districts have no published plan – (Districts 5, 16, and 22)
- 3 were last updated 12 years ago or more – (Districts 13, 20, and 21)

[106] Published District Plans can be found on the State of Colorado Judicial Branch website, or via the following link: http://www.courts.state.co.us/Administration/Custom.cfm?Unit=polprogpra&Page_ID=453.

- 2 have not been updated since 2006 – (Districts 12 and 14)
- 1 was last updated in 2010 – (District 3)
- 9 District plans are not dated, thus the date of issuance cannot be readily identified; however, several appear to be obsolete – (Districts 3, 4, 6, 7, 8, 10, 15, 17, and 18)
- Only 4 have been updated in the last 2 years – (Districts 1, 9, 11, and 19)

Secondly, to fully establish child/youth participation as the norm, rather than the exception, jurisdictions should adopt a presumption of attendance, (which may be rebutted under "reasonable" circumstances). Nevertheless, only 6 of 22 Colorado judicial districts have a specifically stated attendance policy (these include Districts 1, 2, 4, 9, 10 and 11), and only 5 of those (Districts1, 2, 4, 9 and 11) include presumption of attendance. (Note: 3 plans include presumption as to *all* D&N proceedings, 2 districts include presumption as to *Permanency Planning* only). And in support of that presumption, only 4 districts – 1, 4, 9 and 11 – have thus far incorporated guidelines for a judicial finding of reasonableness regarding any absence. This provision appears in different forms in each policy, but the spirit is in harmony with national recommendations. For instance, in section II(1)(b), the 11th Judicial District's plan states:

> The presumption will be that the child will be allowed to come to court. This presumption can be rebutted by the caseworker or the GAL and may include such reasons as young age of the child, mental state of the child, developmental disability of the child, or preference on the child's part to participate in another way.[107]

In that same spirit lies the motive for establishing a mission statement that promotes meaningful participation. Yet, even fewer districts have articulated a common philosophy in that manner. Districts 1 and 11 are the only jurisdictions which have published a statement of philosophy in their plans. This simple, yet essential, declaration of group intention can also manifest in a number of ways. One prime example can be found in the plan issued by the 1st Judicial District: "Making every hearing a meaningful event with defined objectives and/or

[107] Chief Judge Directive 10-2, District Plan for Handling Dependency and Neglect Cases, 2014, State of Colorado, Eleventh Judicial District, II(1)(b).

specific actions to be taken in order to eliminate delay and empower parents to participate in treatment planning and engagement in treatment at the earliest appropriate time."[108] As one of the numerous recommendations made by child welfare advocates, this is quite possibly one of the simplest to execute; nevertheless, the vast majority of district plans are silent on the issue.

Another element of participation for which district plans were evaluated is a consultation provision. To recap once more, the court is obligated by statute to "consult" with any youth aged 12 or older in an "age-appropriate manner" regarding his or her permanency plan.[109] In this context, "consult" is not defined. OCR maintains that best practices require personal interaction between the court and the child. However, in the absence of an official statement precisely outlining acceptable forms of consultation, others may interpret it differently. Thus, district plans must integrate explicit terms of consultation, eliminating biased and overly broad readings of the requirement. Despite this obligation, only 4 of 22 districts – 1, 9, 11 and 18 – define specific consultation provisions.

Lastly, with few exceptions, the published district plans are silent with regard to nearly all accommodation concerns. Direct notification to youth of the right to be heard as well as notification of proceedings is outlined in only 4 plans – Districts 1, 9 and 11, with JD 02 addressing only notification of hearings. Alternatives to personal appearances, such as letters penned by youth and submitted to the court, *in camera* interviews or communication through a GAL or other professional are accounted for in only 4 districts – not surprisingly, 1, 9 and 11, with JD 18 adopting only the last two elements. And telephone appearances are formally adopted by only JD 09.

Other modifications to traditional court practices are found even less frequently – in fact,

[108] Chief Judge Order 13-4, District Plan for Handling Dependency and Neglect Cases, 2013, State of Colorado, First Judicial District, 1.
[109] *See* C.R.S. §§ 19-3-702(2), (3.7).

virtually never. Obstacles to attendance such as docketing outside school hours, time-certain settings, removal from court for harmful portions, youth-friendly waiting rooms, child/youth preparation, allowances for youth to be accompanied by a support person, judicial training, etc. are not addressed by any district, with only two minor exceptions. JD 01 specifically allows for children/youth to have a support person present for court proceedings.[110] And JD 02 definitively names the GAL as the individual responsible for preparing children in advance of court appearances, though options for preparation are not explicitly defined.[111]

The most pressing concern, however, is the overwhelming absence of transportation provisions. As a frequently identified obstacle to attendance, transportation requirements are a crucial element of any effective plan. Youth cannot attend court if the adults assigned to look after their best interests do not take them. This is one aspect of participation for which children are completely reliant on others. In spite of this dependence, only 3 of 22 plans – yet again, Districts 1, 9 and 11 – establish transportation obligations. Notably, each of these districts has adopted policies which allow volunteer CASAs to assist with transportation needs when necessary.

Based on the foregoing, the 9th Judicial District currently boasts the most comprehensive published youth attendance/participation policy, with Districts 1 and 11 similarly situated. With the addition of a mission statement and additional accommodation provisions, this plan may be used as a model for other districts to address deficiencies.[112]

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[110] Chief Judge Order 13-4, District Plan for Handling Dependency and Neglect Cases, 2013, State of Colorado, First Judicial District, 4.

[111] Presiding Juvenile Judge Order, District Plan for Handling Dependency and Neglect Cases, 2010, State of Colorado, Denver Juvenile Court, 47.

[112] See Appendix D for a list of inclusions and exclusions found in the 9th Judicial District's Plan for Processing D&N cases.

b) Comparing policy to attendance

Due to the fact that so few districts have incorporated a youth attendance policy into their procedural plans for D&N cases, comparisons of existing policies to actual attendance rates are inconclusive. Moreover, as none of the district policies are complete in terms of integrating all or the majority of the afore-mentioned national recommendations for inclusion, an accurate assessment of whether such policy changes may positively impact youth attendance cannot be made. At best, a theoretical approach may lead to a partial conclusion. As such, presumption of attendance is determined to be the single-most important and effective of the recommended policy changes. A departure from the current approach, which seemingly involves efforts to accommodate the occasional appearance rather than presuming participation as the norm, this aspect alone would fundamentally alter the common mindset surrounding youth participation. Therefore, the five plans that contain a presumption of attendance provision as to PP events will be compared to the attendance rates previously reported for youth 12 and older at PP hearings in FY13:

- District 1 = 36.75%
- District 2 = 47.13%
- District 4 = 46.09%
- District 9 = 55.56%
- District 11 = 40.00%

Notably, the attendance rates for District 11 must be eliminated from the analysis, since that jurisdiction only updated its plan in May of 2014 – months after the reported FY13 attendance rates were compiled. An accurate analysis would necessitate a second evaluation in FY14, and likely again in FY15, since the plan has not been in place the entire year. With that exception made, at first glance, these figures appear to demonstrate a trend toward a higher than average

rate of attendance.[113] Based on that reasoning, a published, comprehensive attendance policy appears to be an effective way to promote increased participation. However, this conclusion may once again be misleading, since some districts with no written attendance policy also reported higher than average attendance at PP hearings in FY13 (Table 2 above).[114]

XIII. Survey results

A. Questions 1-3 (Q1, Q2, Q3) – Respondent data

The survey was distributed in February 2014, with a response window of 10 days. The request was sent via email utilizing OCR's consolidated contact list, which contains 573 email addresses consisting of the following:

- GALs
- County Attorneys
- Respondent Parents' Counsel Listserv – 142 members
- Judicial officers
- County Directors for CDHS -- with a request to forward to caseworkers
- 16 CASA Directors – with a request to forward to CASA volunteers in their district
- 22 District Court Administrators – with a request to forward to judicial officers who handle D&N cases
- OCR Listserv – approximately 250 members

A total of 258 responses were received, and each of the Colorado judicial districts is represented among the respondents (though in some districts there were admittedly very few returns).

Questions 1-3 were aimed at gathering anonymous data about the respondents (i.e. consent to participate in the study, role in the child welfare system, and primary judicial district where the stakeholder conducts the majority of their professional work). The graph below illustrates the percentage of responses received by the participants' role in the child welfare

[113] Average rate of attendance is calculated at 40.56% based on FY13 CARES reports previously described.
[114] See Table 2, at 37. Districts 8, 9, 12, 14, 15, 16 and 22 also reported higher than average attendance in the CARES reports for FY13.

system (Fig. 1). The pie chart below that shows the proportion of responses received per district (Fig. 2). As these figures illustrate, GALs represent the stakeholder group with the highest percentage of replies, and the 17th represents the district with the largest number of participants.

Fig. 1

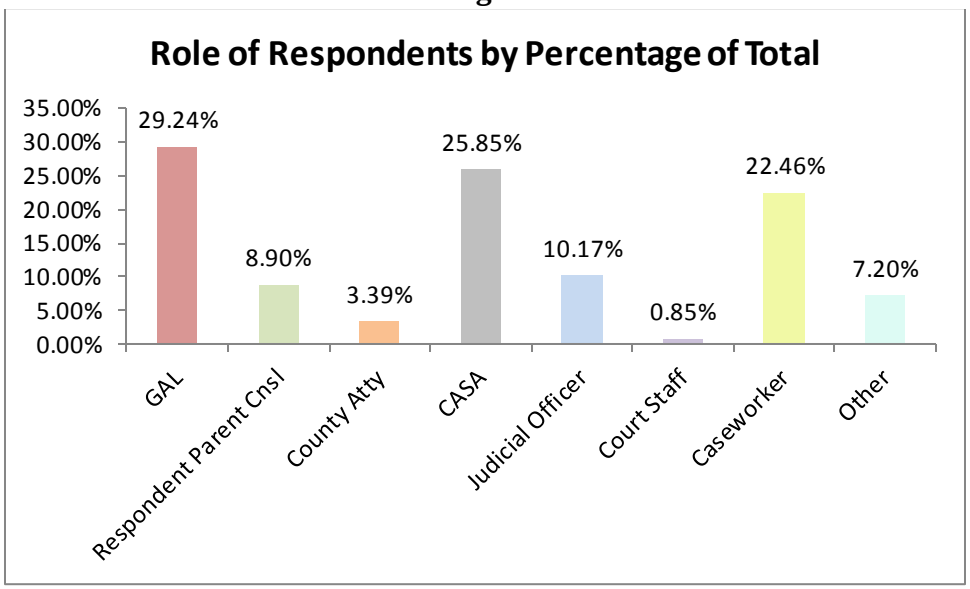
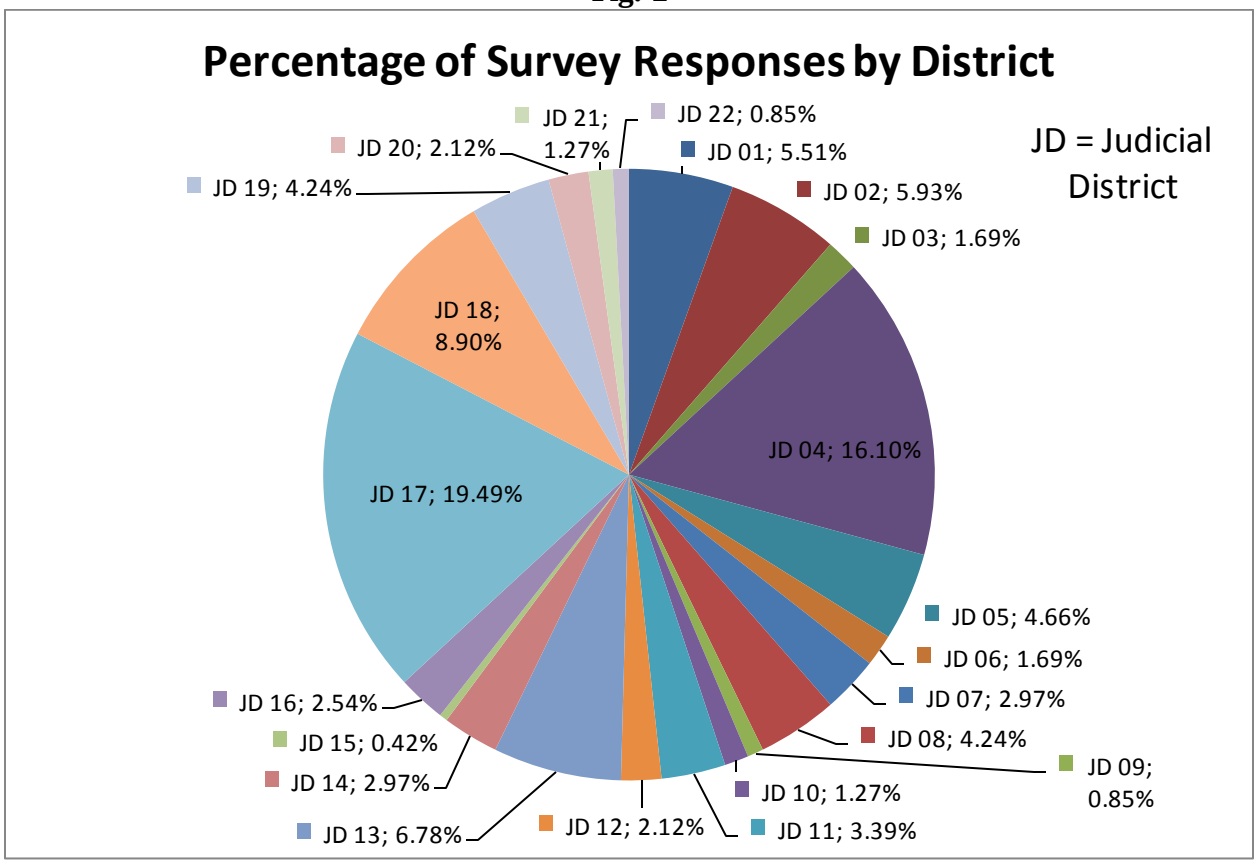


Fig. 2



B. Q4 – Age youth should attend D&N hearings

Colorado statute mandates that youth 12 and older be given an opportunity to participate in their PP hearings. However, best-interests recommendations state that children of all ages should be included in all types of D&N hearings. In an attempt to identify prevailing viewpoints regarding the age at which youth should be given an opportunity to attend, the following question was posed: Generally, at what age do you think youth should attend the following types of hearings? The below table illustrates a variety of responses (Fig. 3).

Overall, Colorado child welfare professionals do not support bringing children under the age of 5 to court for any proceedings. Between the ages of 5 and 11, support for attendance begins to emerge, but the general consensus is that attendance is appropriate for youth age 12

and older. Notably, the majority of respondents disfavor bringing youth of any age to Adjudication hearings.

Q4: Age youth should attend D&N hearings				
	Under 5	5 to 11	12 & Older	Should not Attend
Adjudication	1.42%	8.53%	37.91%	58.29%
Disposition	2.37%	12.80%	67.70%	27.96%
Permanency Plan	3.60%	28.83%	82.88%	7.66%
Reviews	3.67%	25.69%	75.69%	13.30%

Fig. 3

Most survey questions also provided an opportunity for open-ended responses in addition to the form options. A number of issues emerged in the comments provided to this question. First, 18.6% of respondents noted that child/youth attendance is logistically problematic. Hindrances mentioned go to accommodation, and are consistent with common obstacles reported earlier in this review, including things like long waits for court hearings, missing school, open courts where "adult" conversations take place, frustration and lack of understanding on the part of the child, and transportation deficiencies.

A second recurring theme in the responses to this question goes to the age and cognitive development of the child. According to 13.78% of respondents, participation "depends" on maturity and should be determined on a "case-by-case" basis, accounting for the individual circumstances of each case. Moreover, these comments reveal a more inclusive attitude than the state standard (12 and up at PP hearings), but with the "depends" caveat.

Another set of responses (8%) reveals that concerns about whether a child wants to participate should be addressed in any attendance policy – this includes comments about how children often do not want to attend, as well as remarks about how they should be permitted to attend if they want to. Also, 4% of respondents took a firm stance against requiring children to

participate or forcing them to attend.

C. Q5 – Youth opportunity to attend court and participate in PP hearings

Since attendance at D&N proceedings is not up to par in Colorado, I also sought to ascertain whether children are able to attend and participate when they want to. Because state statute at present applies only to PP hearings, this question focused solely on permanency matters. Interestingly, the vast majority of respondents, 83.78%, affirm that youth are, in fact, able to attend PP hearings when they choose to do so (Fig. 4).

QUESTION 5: Able to Attend & Participate in PP proceedings		
Strongly Agree	44.14%	} = 83.78%
Agree	39.64%	
Neutral	10.36%	
Disagree	4.50%	
Strongly Disagree	1.35%	

Fig. 4

Open-ended responses to this question also reveal several recurrent themes. However, those of relevance surface in response to other questions, and will be explored in depth at a later point in this report. Others appear in only a handful of responses, thus are determined to be extraneous and will not be included in this analysis.

D. Q6 – Court interpretation of the "consult" requirement re: permanency plans

Based on low attendance, the absence of clear parameters in district plans, and the ambiguous nature of the statutory "consult" requirement regarding PP hearings, I also sought to determine how courts interpret and implement such consultation. The results appear below (Fig. 5).

Q6: How the Court Consults w/Child Re: Permanency Plan					
Talks to Child in Open Court	***In camera* Interviews**	**Relies on GAL, CASA, or Caseworker**	**Child Letter to Court**	**Do Not Know**	**Other**
60.89%	48.44%	84.89%	40.44%	7.11%	8.44%

Fig. 5

Appropriately, the high percentage of affirmative answers in several categories here suggests that judicial districts approach consultation in a variety of ways. The most frequently recurring answer, "relies on GAL, CASA, or Caseworker," is also likely quite appropriate in regard to forming a final opinion. If the child does choose to attend and directly address the Court, and subsequently offers competing views or requests for future placement/treatment, the judicial officer can consider the child's wishes in tandem with the other evidence and recommendations. However, what is somewhat troubling about this answer and cannot be decisively determined with the phrasing of the question is whether stakeholders believe that child attendance is unnecessary when professionals are present to offer their input. In that instance, a child's view may not be an integral part of the judge's decision-making process, which discounts the child's voice and the significance he/she may personally assign to participation.

Like others, this question also provided an opportunity for open-ended responses. In the few comments offered, a pattern of judicial cooperation arises – according to 3.10% of survey respondents, when judges and magistrates are flexible, open and friendly, participation becomes much more meaningful.

E. Q7 – Notification

In order for youth to participate, they must first be notified of their court hearings. The Children's Code requires that notice of all hearings and reviews shall be provided to all parties in a dependency and neglect proceeding, and to the person with whom a child is placed. (C.R.S. 19-

3-502(7)). As analysis of the District Plans revealed, only a small minority include notification guidelines. Hypothetically, however, notification may also occur in compliance with *un*published policies or district practice. Hence, the following question was also included in the survey: Who notifies youth of court dates? The following table (Fig. 6) illustrates those results.

Q7: Who Notifies Youth of Court Dates?	
GAL	75.23%
Caseworker	67.12%
CASA	34.23%
DHS	14.86%
Don't Know	13.96%
Court	10.81%
*Other	7.21%
*Caretakers (Included in the Other Category)	4.50%

Fig. 6

Interestingly, 4.5% of responses in the "other" category noted foster parent or other caretaker as the individual responsible for notification. But statute *requires* that caretakers be notified and that they pass it on to the children under their supervision.[115] If professionals are unaware of this requirement, they may not be stressing the importance of the obligation to caretakers, who are in the best position to convey the information to children with whom they interact on a daily basis. Nonetheless, the high percentage of responses which identify the GAL or caseworker as the parties entrusted to provide notification indicates that more than one person may be acting on the responsibility at any given time. Multiple notifications are certainly not a hindrance to participation, so responses to this question may suggest that notification is generally adequate. However, since caretakers are legally entitled to notification of hearings, and to then pass it on to their young charges, additional inquiries should be made in order to ensure that

[115] *See* C.R.S. § 19-3-502(7).

notification is occurring as it should.

F. Q8 & Q9 – Preparation

A related area of concern is preparation for court appearances. As posited by scholars and child welfare advocates, thorough preparation in advance of court proceedings may alleviate youth fears about appearing in open court, and may also make the experience a more meaningful one. As such, I sought, through the survey, to determine who prepares youth for court, and how preparation might take place. The results are reported below (Fig. 7, Fig. 8).

Q8: Who Prepares Youth for Court?	
GAL	80.09%
Caseworker	56.11%
Foster parent/Caregiver	40.72%
CASA	34.39%
Don't Know	14.03%
Other	6.33%
*Therapist (Included in the Other Category)	2.26%

Fig. 7

Q9: How are youth prepared to attend court?			
Visit Courthouse	Discuss Expectations	Don't Know	Other
26.91%	69.51%	27.80%	10.76%

Fig. 8

a) Who prepares youth for court appearances?

Conspicuously, 80.09% of respondents state that GALs prepare youth for court appearances, yet there is nothing in published court policies to support this. The wide range of responses identifying several different parties may indicate that preparation is carried out through numerous and diverse channels. However, they may also suggest a troublesome alternative. While it is true that caregivers, caseworkers, CASAs, or therapists can all contribute to preparation, this may also mean there is no one person charged with the responsibility, and thus leaves a gap where people may assume someone else is taking charge. Consequently, there should be a clear procedure for preparation. This can look different for all youth, but districts

should, at the very least, designate a single individual as the person responsible, who may assign tasks or allow others to assist, but should coordinate the process to ensure adequate preparation.

Another intriguing development (one that had not been previously recognized in the research reported here) is that 2.26% of respondents to this question answered that a therapist prepares youth for court appearances. Indeed, for very serious cases, it is certainly appropriate for a child's therapist to provide input and assist with preparation. Unfortunately, the percentage of responses to identify this option is negligible – prudence might suggest that therapist involvement should be sought more frequently. Of course, this survey does not provide conclusive evidence that therapy is not utilized regularly for court preparation, especially since it only appeared because individuals added it in the comment section of their own accord. However, emergence of this issue may point to an additional deficiency in published district plans. Perhaps if therapists routinely assisted with preparation, youth fears about court appearances would be alleviated to some extent. Thus, including an element of therapeutic preparation in district plans might also address fears about participation for adults who are concerned about maturity, appropriateness and re-traumatization.

Notably, one person commented that preparation sends youth to court "with an agenda," as if preparation is tantamount to coaching. However, a structured, explicit preparation procedure – which addresses a child's comfort level – may alleviate those concerns. The intended purpose of this accommodation, obviously, is not to tell youth what to say, but rather, to maximize their ability to participate in the proceeding. In fact, one respondent noted that a "formal process" would be "helpful."

b) How are youth prepared for court appearances?

The question about how youth are prepared for court elicited very little information about

the ways in which professionals work to ensure meaningful inclusion. By far, the most frequently shared method involves discussing expectations and explaining the process (69.51%). Clearly, this is an appropriate strategy, one that should precede every appearance if participation is to be a meaningful experience for youth. Moreover, given that a commonly stated obstacle to attendance is that children do not understand the proceedings, (and therefore may become confused, bored, disappointed and excluded despite being physically present), a thorough and age-appropriate explanation is advisable and necessary prior to attending any hearing.

On the other hand, the frequency (69.51%) with which "Discuss Expectations" occurs is disconcerting. A child's chance at a meaningful experience is denied if he/she receives no explanation of the process prior to attending court. Without an understanding of context, including information about who the players are, when each party speaks, and possible outcomes, a child will most assuredly become bored, confused, disappointed and feel overlooked. As such, it is reasonable to expect a response rate of 100% in this category of replies to Q9.

Additionally, only one other method of preparation was shared with any consistency in response to this question – an advance visit to the courthouse captured 26.91% of the responses to Q9. As with the former method, introducing youth to the courthouse before they attend any hearing is a reasonable and effective means of preparation. However, here again the response rate is less than ideal. Unlike "Discuss Expectations," this option would not necessarily need to occur 100% of the time. But it certainly seems reasonable to expect a vast majority of respondents – not the 26.91% reflected here – to identify "Visit Courthouse" as a viable option for preparing youth to attend.

Admittedly, the figures discussed herein could mean several things. One possible

explanation is that stakeholders who did not answer "Visit Courthouse" or "Discuss Expectations" in response to Q9 do not perceive either of those to be necessary or viable means of preparation. Another possibility is that some survey participants (i.e. judges or magistrates and RPCs) answered "Don't Know" or "Other" and did not choose the remaining options because they are not the individuals responsible for preparing youth for court appearances, and therefore would not be expected to know the answer. And a third option is that the stakeholders who participated in this survey – those individuals who *are* responsible for preparing children for court – are not able to offer more appropriate replies because preparation is not, in fact, occurring as it should.

These different interpretations may indicate an area of study for future research. For instance, perhaps only the individuals directly responsible for youth preparation should be polled about their practices, as well as the frequency of those practices. They should also be asked to elaborate about things like expected outcomes and possible disappointment, introducing youth to the judge away from the bench, familiarizing children with the parties present at hearings, etc. A more important and controlling indication, however, is that explicit preparation procedures should be implemented with consistency and immediacy. By adding this element to published district plans, all stakeholders would become aware that preparation is an integral part of participation. Children in Colorado's child welfare system might then be assured of a meaningful experience when they attend court for D&N proceedings.

G. Q10 – Transportation

In relation to another frequently cited obstacle to court attendance, the survey also posed a question about who transports youth to court. In response, 84.23% of respondents stated that foster parents or some other caretaker perform the duty.

Open responses to this question resulted in one mention of insurance as an obstacle that professionals face at the prospect of transporting youth in personal vehicles. However, since some jurisdictions appear to avoid insurance roadblocks (i.e. those districts which specifically permit CASAs to transport), one wonders if insurance is indeed a significant problem or just perceived to be an issue. Either way, it is a topic for future research and clarification.

Q10: Who transports youth to court?	
Foster parent(s) or Other caretaker	84.23%
Caseworker	66.67%
GAL	34.68%
CASA	29.73%
Don't Know	18.47%
Other	16.22%

Fig. 9

Another respondent commented that in group homes, transport to court rarely occurs in D&N cases; this could and should be addressed in published policies by establishing presumption of attendance, which would reduce the likelihood that group homes will arbitrarily opt out on behalf of the child. Moreover, for reasons similar to the preparation element, a single individual should be designated to coordinate transportation and ensure that all youth are offered a fair and equal opportunity to participate.

H. Q11 – Impediments to participation

In an effort to determine whether common obstacles to attendance apply in Colorado, (and thus whether common solutions might apply as well), I included a related question in the survey. Not surprisingly, the following elements are identified as impediments to youth participation (Fig. 10):

Q11: Impediments to youth attendance									
Missing School	Exposure to Negative Info	Docketing, Long Waits	Youth Do Not Want to Attend	Transportation Issues	Open Courts	Inhospitable Court Facilities	Insufficient Youth Preparation	Judicial Officer Discomfort	Other
81.64%	64.25%	62.32%	54.11%	50.24%	42.03%	19.32%	16.91%	9.18%	10.14%

Fig. 10

As illustrated above, the most frequently recognized impediment to youth attending court is time away from school. Some of the other obstacles mentioned are closely related to this issue – namely, docketing practices where courts frequently set hearings during school hours and fail to account for the child's schedule. Compounding the problem is the common routine of setting numerous back-to-back hearings around the same time. A morning spent observing D&N proceedings reveals that, in some courts, the order in which cases are called is random and somewhat disorganized – professionals who are assigned to several cases presided over by different judges wander in and out of the courtroom at will, drifting from one hearing to the next. At times, though most of the parties to a case are present and the matter is otherwise ready to be called, the court is forced to delay a hearing because a GAL or caseworker has since left the room. Without further information from those behind the scenes, I can only guess that part of the reason for this disordered method of calling cases is due to the large volume of hearings that a court must get through in a given day.

The solution is not easy, but nonetheless must be given due consideration. If courts were to adjust these practices – setting hearings outside school hours whenever possible and following a strict schedule where hearings are held at a time-certain – the amount of time away from school could be drastically reduced. Admittedly, this would require cooperation and careful management. In jurisdictions where the sheer volume of cases causes setting difficulties, individual judges will likely have to coordinate their schedules with other courtrooms. But difficult does not translate to impossible. With finesse and flexibility, a new system could be

devised that would allow youth to participate meaningfully in matters that shape the course of their lives – both their education and their D&N cases.

In the open response section, the great majority of comments are consistent with the above issues – exposure to upsetting dialogue, distance from court, youth embarrassment or discomfort – each of these areas could be addressed with simple adjustments to everyday procedures, including closing the courtroom to the public, sending the child out of the room for difficult parts, or permitting *in camera* interviews. One person does state "I believe the bigger issue is that some of the professionals involved do not want youth in court." If this is true, adding a presumption of attendance provision to district plans, as previously mentioned, may induce those individuals to accommodate youth attendance in spite of their misgivings.

I. Q12 & Q13 – Benefits

Despite the numerous barriers to youth attendance, the vast majority of survey participants, an astounding 86.43%, agree there are invaluable benefits, as well (Fig. 11).

Fig. 11

Q12: Are there benefits to youth attendance?	
Yes	86.43%
No	2.71%
Unsure	10.86%

Youth voice and empowerment (93.9% and 89.67%, respectively) are among the most commonly recognized, and better access to information, both for the court and youth, is a close second (Fig. 12). Of the 26 individuals who expanded on their answers with a written statement, 19 of them stressed that attendance promotes things like youth understanding, voice or buy-in, and may be therapeutic, helping the child feel "a sense of peace." Thus, the number one benefit recognized is empowerment – giving children the opportunity to self-advocate allows them to

have a voice in their future, and demonstrates that their opinion matters. The remaining acknowledged benefits are, as with other areas of this study, consistent with those revealed in the preceding literature review.

Fig. 12

Q13: Identified benefits to youth attendance							
Youth Voice	Youth Empowerment	Informs the Court about Youth Wishes	Informs Youth About Case & Court Process	Youth-Centered Decision-making	Access to Justice	Youth Buy-in	Other
93.90%	89.67%	87.79%	84.51%	73.24%	58.69%	8.92%	13.15%

J. Q14 – District policies (official and unofficial)

Having reviewed current published district plans for processing D&N cases and finding considerable deficiencies regarding youth attendance, I also needed to determine what unpublished or unofficial policies might exist. In many ways, judges have a great deal of discretion over procedures in individual courtrooms. For that reason, it is possible that youth attendance policies develop more organically, from one county to the next or courtroom to courtroom. While this survey cannot alone provide a complete picture if that is the case, it may provide some insight as to how youth participation is managed at the ground level. Hence, the following question was posed: Does your district have a plan or policy regarding youth attendance at court hearings?

Unfortunately, from a policy perspective, stakeholder responses expose a lingering deficiency – of the 219 respondents who answered this question (39 people declined to answer), only 73 (the equivalent of 33.33%) confirm that a policy does exist in their district (Fig. 13). On closer inspection, an additional problem surfaces. While 73 people representing all but 4 districts answered in the affirmative, the remaining participants gave conflicting answers of either no, not sure, or both as to nearly every district, as well (Fig. 14). In other words, representatives from

virtually every Colorado Judicial District give contradictory answers of either yes, no, or not sure when asked if their district has a youth attendance policy. (Districts 9, 15 and 22 are exceptions, each receiving only one answer. However, no more than two responses came from each of these districts, making those numbers somewhat irrelevant to the analysis.)

Fig. 13

Q14: Does District have a plan Re: Youth Attendance	
Yes	33.33%
No	21.46%
Unsure	45.21%

Fig. 14

Q14: Does your district have a plan or policy regarding youth attendance at court hearings?			
Judicial District	Yes	No	Not Sure
*1	11	-	2
*2	4	4	6
3	-	2	2
*4	9	6	16
5	3	1	5
6	1	2	1
7	2	4	1
8	2	-	8
*9	1	-	-
*10	2	1	-
*11	2	4	2
12	1	2	1
13	1	5	8
14	2	3	2
15	-	-	1
16	1	4	1
17	16	3	26
18	7	3	9
19	5	-	5
20	3	-	1
21	-	1	2
22	-	2	-
Total	**73**	**47**	**99**
Percent of Total Responses	**33.33%**	**21.46%**	**45.21%**

*Denotes districts with a published youth attendance policy for D&N proceedings.

The data gathered here is extremely problematic in several ways. First, of the *6 districts that do have a published attendance policy for D&N hearings, representatives from five of them answered either no or not sure – if people are unaware of an attendance policy, it cannot be

effective. Thus, where a policy exists, efforts must be made to educate professionals about the details, as they are the individuals in a position to carry it out. Second, conflicting data indicates that current policies regarding youth attendance – published or unpublished – are likely not being followed consistently if some people are unaware of their existence. And lastly, the most obvious concern revealed in this data is that the vast majority of respondents answered either in the negative or they are not certain whether a policy for youth attendance is in place in the districts they represent. This is consistent with the district plan analysis set forth earlier in this report where the majority of existing plans were found to be deficient, indicating that children are experiencing fluctuating standards from one district to the next – perhaps even in the same courtroom.

K. Q15 – Policy effectiveness

A related query aimed at those participants who stated there is an attendance policy in their district sought to determine whether those policies promote youth attendance, and if youth participation in those districts is consistent with the plan. 86.11% of those respondents (the 73 people who answered in the affirmative to the question reported above) either strongly agreed or agreed that existing policy promotes youth attendance (Fig. 15). A significantly lower percentage of respondents, 51.43%, strongly agreed or agreed that the level of youth participation in their district is consistent with the district plan (Fig. 15).

Open-ended responses to this question are few, totaling only 8, but 3 of those demonstrate a negative attitude among professionals toward youth attendance. For instance, Q15-7 states "Professionals are uncomfortable with kids in court and believe court is not an appropriate place for kids." Interestingly, one comment (Q15-4) refers to the way in which friendly, approachable judges may make court attendance a more meaningful experience for

youth – though this issue is mentioned only once, it also surfaces in several other questions, and may point to an efficient method for accommodating youth attendance. Like those in previous questions, additional topics referenced are so few in number they cannot be considered prevalent viewpoints among stakeholders, and thus will not be considered in this analysis.

Fig. 15

QUESTION 15: Effectiveness of existing plan					
Policy promotes youth attendance			Youth participation in district consistent w/plan		
Strongly Agree	41.67%	} = 86.11%	**Strongly Agree**	22.86%	} = 51.43%
Agree	44.44%		**Agree**	28.57%	
Neutral	8.33%		**Neutral**	31.43%	
Disagree	2.78%		**Disagree**	14.29%	
Strongly Disagree	2.78%		**Strongly Disagree**	2.86%	

Since the preceding data, where participants were asked if a plan regarding youth attendance exists in their respective districts, is largely contradictory, the information gleaned from this question is of limited value. Nonetheless, it must be considered along with the rest of the survey results, leading to a tentative conclusion that, where a policy exists, it does effectively promote attendance.

L. Q16 – Adequacy of youth participation

Another associated inquiry was formulated in an effort to determine whether stakeholders feel that youth participation is adequate in their districts, and thus do not perceive a problem with current practices. Responses to this question reveal mixed results, but most participants were either neutral on the issue (38.76%), or they agreed (36.36%) or strongly agreed (9.09%) that participation is indeed adequate. The results are reported in the table below (Fig. 16).

Since the majority of respondents appear to believe current youth attendance rates at D&N proceedings are satisfactory, one might conclude that stakeholders may not support efforts

to bring youth to court more often. However, that deduction is largely based on inference and may be an area for further inquiry in later research.

Q16: Participation is adequate in my district	
Strongly Agree	9.09%
Agree	36.36%
Neutral	38.76%
Disagree	13.88%
Strongly Disagree	1.91%

Fig. 16

Open-ended responses to this question do offer additional insight as to why respondents may have answered in the manner they did, as well as why youth may not be attending. Two comments again reinforced the idea that supportive judges (or magistrates) facilitate better and more frequent participation. For instance, Q16-2 states "The Judges/Magistrates are very strong supporters of Youth and speak directly to them and have gone out of their way to have extra meetings for those who cannot attend Court." Six others stated that, though youth participation is adequate, it could be better, and 2 additional individuals noted that practices regarding youth attendance are improving in their district, indicating that "adequate" is not necessarily the preferred standard.

Additionally, issues regarding transportation arrangements were mentioned by 3 respondents. For instance, Q16-3 states that if foster parents were "required" to bring kids to court, as they are in delinquency cases, instead of merely being "asked," youth would come more often. While 3 statements do not necessarily indicate a general trend, they are consistent with issues raised at other points in the survey, and thus must be considered in relation to the whole.

Most significantly, these responses include 3 statements that imply a negative view of youth attendance policies due to a fear of or unwillingness "force" children to go to court. Q16-

22 reads, "We don't drag the youths to court." And Q16-25 states, "Some Children [sic] do not want to come to court and they should not be forced to do so." Although this worry only surfaces among 3 of the participants, it is nevertheless a significant observation that may provide a clue about why stakeholders are reluctant to impose a policy requirement in regard to youth attendance. In order to alleviate such concerns, agency recommendations and district plans should stress that youth must be *permitted* to attend court, and not that they will be *required* to attend. Since the goal of youth participation is to empower and inform, choice is a necessary component. Furthermore, professionals may be required to offer a meaningful *opportunity*, but dragging children into court if they truly do not want to be there would clearly be counterproductive.

M. Q17 – Empowering and pleasant experience

To gain a more complete picture of youth attendance at D&N proceedings in Colorado, participants were also offered an opportunity to respond to several purely open-ended questions. In doing so, I assumed that issues, concerns, or solutions unique to the state or individual districts could arise that were not part of my initial research nor previously reported by stakeholders in the survey. Additionally, this option allowed respondents to elaborate in ways they may not have felt appropriate to earlier parts of the survey, which may in turn help clarify perceptions and attitudes about youth participation.

As the first of three open-ended questions, Q17 posed the following: What steps, if any, has your district taken to make court attendance an empowering and pleasant experience for youth? Specifically, this query was intended to provide an opportunity to elaborate on policy in the event preceding questions failed to elicit relevant information. For example, respondents may have chosen not to include the steps that districts or separate courtrooms have taken in an

informal capacity to accommodate youth attendance, interpreting "policy" to be formal, written procedures. To this question, 106 responses were received – a significant number. Key responses appear below (Fig. 17).

Fig. 17

Q17: Steps taken by districts to make attendance an empowering and pleasant experience for youth. (Accommodation)

	Judge Demeanor, Character, Flexibility	Meet in Chambers	Other Accommodation Practices (*See Fig. 18 for a detailed description)	Prep Youth Prior to Court Appearance	Transportation Arrangements	Policy to Encourage Attend.	Closed Courtrooms
No. of Responses Received per Category	54	17	14	6	6	6	4
Percentage of Responses Received per Category	50.94%	16.04%	13.21%	5.66%	5.66%	5.66%	3.77%

Answered: 106 Skipped: 152

Percentages reported are based on 106 Answers (152 skipped)

By far, the practice mentioned that best facilitates youth attendance in the current landscape is open, amenable, friendly judges. Some come down from the bench, take off their robes and speak to youth in an informal, relaxed manner. Some address children openly, with a friendly tone and at their age level. Others make certain to listen to the youth attentively and give them adequate time to talk. Still others, at times, offer to speak with children in chambers or before/after court, close the courtroom to outside parties, set hearings after school, or have the child leave the courtroom for certain portions. Thus, a judge who champions youth attendance may be an effective, essential component of meaningful participation. For this reason, judges should be educated about the benefits derived from participation, and must also receive proper training for engaging and interacting with youth in the courtroom.

Regrettably, the remaining steps districts have taken to ensure a meaningful experience for youth who attend court are infrequent at best. For instance, out of the 258 people who

participated in the survey, only 17 mentioned that *in camera* interviews are routinely offered as an alternative to appearing in open court. Given the overwhelming concerns expressed in both the literature and the survey about no-contact orders, compromised privacy as a result of open courts, or re-traumatizing youth through exposure to an adversarial courtroom environment, it is reasonable to assume that this option should be appearing more frequently. Moreover, these responses came from only 8 districts, so it is not clear whether judges in other districts make the same allowances for participation. The same may be said for the remaining steps mentioned – if only a handful of stakeholders express that these alternatives are offered on a routine basis, a reasonable inference may be made that these practices are not generally observed.

Numerous additional accommodation practices are also mentioned in regard to steps that courts have taken to facilitate and encourage youth participation (Fig. 18). Some of these are consistent with best-interests recommendations, and, as such, should also be appearing more frequently among the responses – presumption of attendance, educating professionals about the benefits to attendance, removing children from the courtroom for harmful portions, and explaining the process thoroughly to youth who attend. Additional measures identified include allowing a support person to stand/sit with youth during proceedings, a CASA Kids in Court program to address transportation issues, and court tours or preparation prior to participation. Other steps mentioned may be somewhat unique to the district in which they originate, and could be a powerful means of supporting youth who want to attend court. These include children's books in each courtroom and a newly formed committee whose purpose is to address the attendance policy in the 1st Judicial District, donated stuffed animals procured by a judge in the 18th, and a Youth Coordinator in the 17th. The survey did not provide a format for elaboration on these policies, and the details are not part of this report (though donated books and stuffed

animals are straightforward, simple and relatively inexpensive things to implement). Future research may be advisable in order to determine if these policies are effective, and thus a viable alternative for other districts to consider implementing as part of a new plan for processing D&N cases.

Fig. 18

Q17: Other Accommodation Practices	# of Occurrences
Presumption of attendance (as to PP)	1
The child is given a full explanation prior to any court appearance that the judge wants to hear what he/she has to say, but the final decision will be based on information received from all parties, and it may not align with the child's request	1
Children's books in each courtroom (Q17-90)	1
Stuffed animals donated to give to children (Q17-103)	1
Educate professionals about benefits of attendance	2
Child leaves for harmful portions	2
Support person at court for child	2
Court tours	1
Committee to address attendance policy	1
CASA "Kids in Court" program where volunteers assist with transportation	2
Youth Coordinator	1

In general, however, most districts appear to have done little, from a policy perspective, to accommodate youth attendance. In fact, 11 respondents allude to negative attitudes around youth in court, with statements ranging from no steps taken to outright discouragement. As one participant mentioned:

> One GAL is complaining in open Court that OCR is compelling her to demand attendance. We have a divided Court as to the value of having every child in placement attend every hearing. The Courts are united that they do not wish to interview children in chambers. Docket congestion makes for multiple hours of waiting for some kids. (Q17-66)

Additional comments referenced the open courtroom experience as a barrier, long wait times for cases to be called, judge refusal to meet in chambers, and youth who do not want to attend court. The full import of these statements cannot be assessed from this research alone – they could be anecdotal, meaning the experiences of a few are not necessarily representative of the whole. However, the frequency with which they occurred may be enough to warrant further investigation in future studies. And at the very least, it should be noted that comprehensive, official policy changes could address some of these concerns, leading to a more favorable view of youth attendance in some circumstances.

N. Q18 – Concerns about youth participating in court

The second of three open-ended questions, Q18 asked the following: What concerns, if any, do you have about youth participating in court? Somewhat related to the earlier question about impediments (Q11), this inquiry was intended to determine what might be keeping professionals from bringing youth to court. The concerns mentioned are, for the most part, consistent with common fears discussed in earlier parts of this report, as shown below (Fig. 17).

Fig. 19

Q18: Concerns Re: youth participation in Court								
Trauma of Exposure to Negative Info	Youth do not Understand the proceedings	Open Court (i.e. privacy concerns, etc.)	Accommodation Issues	Children s/b Removed from Court for "Harmful" portions	Participation, Attendance s/b based on age, maturity, case specifics	Youth should not be forced to attend	Judge Discomfort	Interviews in Chambers are better than appearing in open court
61	16	15	13	8	8	8	4	2
57.55%	15.09%	14.15%	12.26%	7.55%	7.55%	7.55%	3.77%	1.89%

Answered: 106 Skipped: 152

Percentages reported are based on 106 Answers (152 skipped)

Since the majority of concerns referenced in the above table have been discussed at length in earlier portions of this report, they will not all be revisited here, except to say that

reiteration of these fears provides clear evidence that previously suggested solutions and recommended policy changes apply. However, some matters are deserving of a closer examination in the context of Colorado's child welfare system – trauma-related fears and nervousness around "forcing" children to attend court.

a) Trauma-related fears

At 57.55%, exposure to new trauma is the number one concern, by far, that arose among those who responded to Q18. The issue that received the second highest rate of response, limited youth understanding of complex court proceedings, was referenced by only 15.09%. This extreme variance warrants careful consideration of issues surrounding the possible infliction of trauma.

According to survey participants, new trauma may be inflicted on youth who attend D&N court proceedings in a number of ways. Firstly, exposure to negative information about parents could cause vulnerable children, who are in the process of healing, to relive their abuse. "Adult" or "inappropriate conversations" often take place, and there may be a desire to shield children from upsetting or disturbing content. Secondly, appearing in court could be intimidating – either because the courtroom itself is imposing or because facing parents as the opposing party in an adversarial court system is a daunting prospect. In some cases, there are no-contact orders or visit restrictions, and parents react negatively to the appearance of their child in court, even to the extent of name-calling or publicly disowning children. In these high conflict situations, the safety of youth is at issue, especially in cases where "some parents have threatened to kill" their own child (Q18-101). Additionally, the pressure of appearing in court produces anxiety, stress and extreme discomfort in children and youth. Additional terms used to describe this phenomenon in vivid detail are: re-traumatization, hurtful, venom, not pleasant, damage, counterproductive and

fear. The sheer intensity of the words used in connection with concerns about trauma necessitates solemn contemplation.

Fears of trauma or exposure should not be easily discounted nor overlooked. Professionals who are directly involved have the best understanding of the dynamics of each case, and their position on attendance should be given due consideration. Yet, child advocates assert that the trauma youth may be exposed to in a courtroom is nothing compared to what they experienced prior to placement, and that talk of exposure to contentious court hearings and re-traumatization is making too much of the issue.[116] This may be over-simplifying the matter, however. Despite being jaded by prior life experiences or abuse, children remain vulnerable by virtue of their humanity. When pricked, surely they bleed. Their pain threshold may be higher than that of their peers, but it is not nonexistent. As such, it may not be appropriate for children to attend court personally if their physical and emotional well-being may be compromised.

Nevertheless, it remains appropriate to include children in the proceedings in some manner, and in every case. If circumstances are such that direct attendance is imprudent, multiple alternatives for participation should be offered to include the child otherwise – letters, appearing by telephone, *in camera* interviews, closing the court for certain hearings, etc. Also, concerns about trauma may provide more evidence that a support person or therapist should be on hand to help deal with painful events or unanticipated repercussions. If a paid staff therapist is not economically feasible, perhaps a victim advocate volunteer could be utilized instead.

Notably, all parties in a given case – the child welfare team, the court, advocates, and policy-makers – are invested in the best interests of children. To that end, concerns about re-traumatization should be addressed in any policy recommendation.

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[116] Jenkins, *supra* note 23, at 171.

b) Nervousness about "forcing" youth to attend

In addition to fears surrounding re-traumatization of youth, participants who responded to Q18 again expressed alarm at the idea that children might be required to attend court. This issue was discussed in detail in relation to Q16, and will not be rehashed here. However, it is worthwhile to note that, while only 3 individuals expressed concerns about forcible attendance in the previous question, several more people – a total of 8 – made mention of it here. Though the number of occurrences remains comparatively small in relation to the total number of survey participants, framing attendance policies in a manner that nullifies such concerns may be advisable. Thus, district plans should clearly demonstrate that requirements regarding youth attendance apply to meaningful opportunity, and not to forced participation.

O. Q19 – Miscellaneous observations

The last of three open-ended questions, Q19 was added to the survey in an attempt to capture any lingering thoughts among stakeholders about youth participation in Colorado D&N proceedings, which may not have been shared in previous questions. Thus, the following question was posed: Is there anything else you would like to share with us about youth participation at court hearings? A total of 56 responses to this question were received, and comments were, for the most part, consistent with previously addressed issues that have a significant impact on youth attendance. The results are shown in the table below (Fig. 17).

Promisingly, the majority of comments offered in response to this question reinforced that the benefits derived from youth participation are significant and noteworthy. Indeed, 71.43% of those who responded took the opportunity to re-state that empowerment and youth voice are a critical part of the process, and children and youth deserve to have input on their cases. One statement reads: "It is always great to see the children who are the subjects of these cases. They

remind us of what is important…and why we make the decisions we do. However, this applies whether the children are three months or fifteen years of age" (Q19-36). Additional benefits revisited include educating the child about family dynamics, the court process and the reasons why decisions are made, and assisting the court by putting a face to the name and providing accurate, firsthand information.

Fig. 20

Q19: Other thoughts Re: youth participation in Court					
Benefits to Youth Re: Empowerment	Accommodation Issues	Participation, Attendance s/b based on age, maturity, case specifics	Transportation, Insurance, Distance from Court Concerns	Youth should not be forced to attend	Open Court Concerns
40	15	5	5	3	2
71.43%	26.79%	8.93%	8.93%	5.36%	3.57%

Answered: 56 Skipped: 202

Percentages reported are based on 56 Answers (202 skipped)

On the other hand, respondents felt strongly enough about certain impediments to revisit those, as well. Concerns about open courts and exposure to harmful information occurred in 2 of the comments, and 1 individual again stressed that appropriate auto insurance coverage is difficult to obtain. In addition, 4 participants re-asserted transportation obstacles, and 5 emphasized that the appropriateness of youth attendance should be determined on a case-by-case basis, depending on case dynamics and the age and maturity of the child in question. Moreover, 3 more comments contended that youth should never be forced to attend court, and if they are disinclined to do so, their choice should be respected. Lastly, Colorado stakeholders indicated once more that there are logistical barriers to consider when contemplating youth attendance at court. These include the following accommodation issues:

- preparation procedures in advance of court appearances need to be improved;

- hearings need to be timely or set around school hours;
- youth attendance is inconvenient to professionals and the court and allowing them to speak may increase the duration of hearings; and
- appearances by phone are the best option for participation when youth live a great distance from court.

All of these elements have been addressed in earlier parts of this report, and the reader is directed to those sections for additional information. The discussion will not be replicated here, except to say that the needs of Coloradoans appear to be consistent with those recognized by others (see the review of the literature in preliminary portions of this report), therefore, implementing comprehensive, nationally recommended solutions across the state is advisable.

XIV: ANALYSIS & RECOMMENDATIONS

The foregoing research was undertaken in an effort to determine if children and youth across Colorado are permitted equal access to the legal system, accepting the proposition that increased participation in D&N proceedings is in their best interests. Prior academic and legal studies demonstrate that including children in court proceedings that fundamentally shape their future comes with incomparable benefits – more informed courts, child/youth empowerment, cooperation and buy-in, and better information for other stakeholders in the child welfare system. Despite the many benefits, there are significant obstacles to direct participation, as well. Yet, these can be overcome with planning, cooperation, and recognition of a child's right to participate. As such, this investigation explored current attendance rates in Colorado, published judicial district policies for processing D&N cases, and stakeholder perceptions about youth attendance.

This investigation was approached with the following goal in mind: presumption of attendance for all D&N proceedings, supplemented with a finding of reasonableness in the event of any absence. (This goal may be altered to exclude Adjudication proceedings and children

under the age of 5 given the strong opposition expressed by many stakeholders in the survey.) Such presumption should be enforced consistently throughout the state of Colorado, with the ultimate objective being 100% compliance. In conjunction and in the event of any absence, a finding must be made on the record stating the reasons why a child is not in attendance, which may be reasonable upon consideration of individual case dynamics, a child's development and maturity or choice not to attend, and important school commitments. Acceptable means of alternative participation should also be found reasonable – these might include appearance by telephone, *in camera* interviews or letters submitted to the court.

A. Attendance recap and next steps

Though attendance for the majority of D&N proceedings is not tracked, the available data demonstrates that attendance rates remain below an acceptable standard. This conclusion, however, is largely based on inference and circumstantial evidence. Additional data is needed in order to accurately assess the rate of attendance at all hearings, as well as the reasonableness of absences. More information would lead to better and more accurate conclusions. As such, attendance and reasonableness findings should be tracked for every hearing in D&N cases.

Presumably, there are realistic options for introducing such a task. The state judicial department's record-keeping software is already adapted to record other statistics, including things like the number and type of hearings held, dismissals, the length of time cases remain open on a judge's docket, and more. Theoretically, an adjustment could be made to the system to allow court staff to record youth attendance and judicial findings of reasonableness at every hearing. As part of the Colorado state judicial branch, OCR could then be granted access to that information, which would provide the agency (and individual districts) with an accurate measure of attendance rates. Moreover, routine tracking of attendance at all proceedings may have an

added benefit – recording this information could add a layer of expectation and legitimacy to new participation standards, holding stakeholders accountable in the process.

In the absence of better information, however, it is reasonable to infer that attendance rates fall well below the stated goal of 100% at all D&N proceedings. Therefore, efforts must be undertaken to offer youth more and better options for participation. This is especially critical in regard to PP hearings for youth age 12 and older, who, pursuant to statute, must be consulted in an age-appropriate manner regarding their permanency plans.[117] For this group, the evidence plainly demonstrates that attendance, at only 40.56%, is inconsistent with specified goals and likely incompatible with the originally intended purpose of the statute.

B. District Plan recap and next steps

Analysis of published District Plans for Processing Dependency & Neglect cases reveals that, in terms of youth participation, current policies are deficient in numerous ways. First and foremost, there should be a consistent plan across all Colorado judicial districts. The alternative, in essence, means that children in one jurisdiction may be given ample opportunity to participate, while a similarly situated child in a neighboring jurisdiction is effectively barred from entering the courtroom. For instance, the statutory obligation to "consult" with youth age 12 and older is defined differently by courts and individuals who work within them – thus it is necessary for district plans to set forth an explicit definition for the term in order to eliminate conflicting interpretations from one jurisdiction to the next. With the current approach, only 6 of the 22 districts in Colorado incorporate an attendance policy in their published plans. Of those, only 5 include a presumption standard, which applies to *all* D&N proceedings in 3 jurisdictions, and to *Permanency Planning* only in the remaining 2 districts.

Adding a statement of philosophy or mission statement is perhaps the most expeditious

[117] 42 U.S.C. § 675(5)(C).

way to establish a common approach to youth participation. Yet, only 2 districts have included one in their published policies. Arguably, a carefully formulated statement could help reduce or eliminate lingering doubts about youth attendance. Properly stated, it may also establish a clear, systemic position that attendance is in the best interests of youth, subsequently guiding stakeholders in that direction.

The next, and perhaps most essential, addition to published policies is presumption of attendance. Instead of making forced adjustments under pressure for the occasional appearance, child welfare advocates should presume that all children will attend their hearings. As previously asserted, this provision alone would fundamentally alter the current mindset around youth attendance. As an established standard, professionals may be incentivized to find solutions that facilitate youth attendance. Likewise, a finding of reasonableness in the event of any absence would necessarily entail realistic, coordinated efforts to bring youth to court. And from this component, other elements of facilitated participation may logically follow.

Additional recommendations for critical improvements to published district plans are outlined below.

- Explicitly stated alternatives to speaking in open court
    - Appearance by telephone
    - Letters or video submitted to the judge
    - *In camera* interviews
- Accommodation practices
    - Time-certain settings
    - Settings outside school hours
    - Closing the court during youth testimony
    - Removing children from the courtroom during potentially harmful testimony
    - Limited use of legal jargon
    - Accessibility provisions – youth-friendly waiting rooms
    - Breaks from lengthy proceedings
    - Permitting children to bring a support person to comfort, encourage, and explain
- Notice requirements designating a specific individual as the party responsible for follow-through

- Preparation requirements also designating a specific individual as the party responsible for follow-through
    - Explanation of the process and expected outcomes
    - Court visits in advance of first appearances
    - Optional – introductions between youth and the judge assigned to their case
- Transportation requirements also designating a specific individual as the party responsible for follow-through
- Minimum training provisions for judicial engagement with youth

For reference, the 9th Judicial District Plan for Handling Dependency and Neglect Cases is suggested as a basic model which other jurisdictions may consult when updating their published policies. Though this plan does not address all relevant components of attendance, it is by far the most inclusive of all existing plans.[118]

C. Survey recap and next steps

The survey provided a wealth of information. As previously noted, 258 responses were received, and each of the Colorado judicial districts is represented among the respondents. Most notably, 86.43% of survey respondents believe there are benefits to youth attendance, and empowerment was recognized as a significant derivative. Between the ages of 5 and 11, substantial support for attendance at most hearings begins to emerge, but the general consensus is that attendance is appropriate for youth age 12 and older at all hearings beyond the Adjudication stage. (Notably, the majority of respondents disfavor bringing youth of any age to Adjudication hearings.) These views should be accounted for in the development of a consistent plan for Colorado – the stakeholders who completed the survey work with the population in question on a daily basis, and they have a deep understanding of the children themselves, their families, and the possible outcomes of all court proceedings. Perhaps such concerns would be addressed with a presumption of attendance standard for youth of all ages and at all D&N proceedings, which could be rebutted by professionals on the record under reasonable

[118] See Appendix C for a list of attendance provisions for which each District Plan was evaluated. A link to the 9th Judicial District Plan for Handling Dependency and Neglect cases is also provided.

circumstances.

Importantly, survey respondents also established by clear consensus that approachable, friendly, amenable judges and magistrates are an essential component of any hearing when youth are in attendance. Such demeanor establishes a welcoming and warm atmosphere, which may counterbalance the intimidating nature of adversarial court proceedings. In turn, some youth who are apprehensive or fearful of the courtroom may be assured of a positive and meaningful experience. As such, district policies should incorporate a training provision, where judges and magistrates are educated about best practices for engaging youth who appear in their courtrooms.

In addition to the above, several concerns emerged through the survey that may explain low attendance rates, and that may warrant further inquiry at a later date. Despite the overwhelming acknowledgment of benefits derived from youth participation, stakeholders strongly feel that, in each case, child representatives must make an individual determination about the appropriateness of attendance depending on the age and maturity of the child and family or case dynamics. Furthermore, survey participants frequently stated that youth do not want to go to court, and they expressed great concern about any policy that would require youth to attend. Therefore, attendance policies should clearly state that youth will not be forced to attend court – rather, the goal is to provide an equal opportunity to participate when they want to. And the reasonableness provision formerly recommended should address any concerns about case-by-case determinations.

The obstacles to attendance that were recognized in the survey are largely consistent with those recognized by academics and legal scholars – long waits in courtrooms, missing school, re-traumatizing vulnerable children, transportation issues, etc. That being said, solutions to common obstacles are consistent with those recommended in the research, as well. There is, however, one

area of note that may warrant further investigation – transportation hurdles, which were discussed by numerous survey participants, and difficulties around proper auto insurance coverage were specifically identified. This suggestion is incompatible with other findings in this report. Some districts seem to have found ways to maneuver around insurance roadblocks – namely, those who expressly allow CASA volunteers to help transport youth to court. As such, this issue may warrant further exploration. The information gathered should then be disseminated to caseworkers, GALs, CASAs and foster parents to eliminate any confusion and to help these individuals identify viable transportation options.

Additionally, based on the survey responses, it remains unclear who is responsible for notification and preparation in the state and each district. For reasons previously outlined, one person should be designated to ensure that each of these areas is given proper attention. The frequent recurrence of these issues underscores the importance of clear guidelines and minimum requirements.

Similar to the district plans, inconsistencies around the term "consult" emerged. According to stakeholders, consult is most commonly defined by communication between the GAL, CASA, or Caseworker and the court. At times, however, courts may consult with children in other ways. These irregularities again indicate that a uniform definition is desperately needed in order to ensure that children in Colorado D&N cases enjoy equal access to state courts.

Lastly, contradictory answers about the existence of district policies implies that, even where attendance policies do exist, all stakeholders are not consistently aware of the details and conditions, and as such, are likely not observing the policy. For this reason, each district should take immediate steps to ensure that its representatives are following a uniform standard.

Overall, the research reported herein leads to an unavoidable conclusion – children and

youth across Colorado are neither receiving equal treatment by nor equal access to the legal system. Accordingly, individual judicial districts must take immediate action to rectify the problem, coordinating with one another to devise a consistent, mutually agreeable attendance policy.

XV. ADDITIONAL RECOMMENDATIONS

In addition to the recommendations made above, which in most instances are immediately actionable, several related matters have emerged through the course of this research that merit future study and investigation.

Through the survey, numerous stakeholders persistently asserted that many children and youth do not want to attend court and they should not be forced into a courtroom. Yet, circumstantial and anecdotal evidence would suggest otherwise. Furthermore, this contradiction is refuted by feedback collected from youth who have spent time in the child welfare system, as demonstrated in the youth-generated project published by Home at Last and Children's Law Center in Los Angeles.[119] However, there is a gap in the available literature where further youth input should be. This circumstance is reasonable given the complications involved in studying human subjects, especially a vulnerable population like children who are healing from traumatic abuse and neglect. Nevertheless, much as it should in a courtroom, the youth voice should be considered when establishing policy that affects their well-being. Consequently, further efforts must be made to collect additional feedback from youth. Potentially, this could be accomplished through focus groups which should include children of all ages, as well as youth who have been included in the courtroom experience, and those who have been excluded. Stakeholder focus groups might yield more useful information, as well.

Another area for future research would include an investigation and analysis of the

[119] HOME AT LAST AND CHILDREN'S LAW CTR. IN L.A., MY VOICE, MY LIFE, MY FUTURE 7, 10, 13 (2006).

national landscape around youth attendance at D&N proceedings. Questions to be asked are the following: Which other states have sought to include children and youth in their D&N cases more fully? To that end, what procedural policies have been implemented to facilitate meaningful youth participation? Furthermore, how have these policies been implemented? Do children report feeling more empowered by inclusion in those jurisdictions? And lastly, where some of the recommendations for inclusion have been implemented, what works and what fails to accomplish the intended objectives? These areas and more may help eliminate lingering doubt among stakeholders, and could help identify methods for implementing recommended policy changes in Colorado.

A third option for future research is to identify one or more districts where a pilot study could be introduced for a proposed new plan, which should include as many of the recommendations for increased youth participation as possible. If youth attendance improves as a result, and if stakeholders and/or youth report better outcomes for children who have been included in the process, the plan could then be implemented in all Colorado districts. The districts which currently have the most comprehensive policies would be logical places to start, since they already include some of the recommended policy changes. These plans, including Districts 1, 4, 9 and 11, already incorporate presumption of attendance for all or some D&N proceedings, as well as guidelines for a judicial finding of reasonableness regarding any absence. As such, implementation of additional attendance policies might best be accomplished in these areas of the state. Moreover, already accepting of the standard, judicial officers in those jurisdictions may be amenable to pilot study participation.

XVI. CONCLUSION

Ultimately, one might be tempted to dismiss the information shared in this report about

benefits, impediments, recommendations, policies, accommodation, etc., and to decide that change is too difficult, the obstacles too large and the challenges too daunting. Resources are not finite, and dependency courts are already spread too thin. As long as dependent and neglected youth are represented in court by an attorney trained to act in the best interests of their young clients, the appearance of those clients is superfluous to the proceedings and they need not bother attending. Furthermore, the system need not bother to accommodate them. After all, it is not the children, but the adults – professionals working in child welfare on a daily basis – who stand to suffer the greatest inconvenience from a significant adjustment to the system. And if youth have something to say, they can say it through a representative – a GAL or CASA for instance, who is perfectly willing to speak for them.

However, this conclusion would be erroneous and unjust, for youth crave information and contact now – not later. Living in turmoil, subject to the whims of a powerful Other consisting of their parents, strangers and the courts, children who have experienced abuse or neglect yearn to be heard, to have a voice and to maintain some control over what happens to them. They wait, in constant flux, to hear about changes to their present situation, their families and future possibilities. And for some, giving or receiving information secondhand is simply not good enough.

Appropriately, professionals should act as conduits of information. Conceivably, however, nuance and meaning may be lost in translation. Thus, it is unfair to presume that sharing through a representative or receiving secondhand information at some point after the fact is adequate and therefore enough. On the contrary, bilateral modes of communication, options for sharing which include trained professionals as well as those most affected by the outcome, is the only fair and just approach. Moreover, since much discussion of participation centers around

the risk of re-traumatizing youth, as well as the adversarial and intimidating environment of a courtroom, frequent visits might lend a sense of familiarity and well-being if youth encounter the friendly and welcoming judges or magistrates of whom other professionals speak so highly. Whereas blocking youths' access to the courtroom will only serve to reinforce its mystery and unapproachability, granting them entrance will instill a sense of fairness, trust, and the ability to self-advocate – to speak on their own behalf in lieu of sole reliance on someone else to speak for them.

The evidence is clear. Once silenced, young survivors are asking to be heard, and those entrusted with the responsibility of protecting them are morally obligated to listen. Moreover, all children in every jurisdiction deserve the same opportunity to benefit from such empowerment. Thus, in order to ensure that children across Colorado receive equal treatment and equal access to the justice system, district courts should adopt a state standard, which sets forth minimum provisions for all judicial districts regarding youth participation in D&N proceedings. Only through articulation of an unambiguous, explicit standard can professionals be held accountable for enforcing it.

APPENDIX A
OCR Executive Director Invitation to Complete Survey

RE: OCR Survey of Youth Participation in Court

Dear [INSERT STAKEHOLDER: Judicial Officers, Respondent Parents Counsel, County Attorneys, Caseworkers, GALs];

The Office of the Child's Representative, in collaboration with the University of Denver Colorado Women's College, is conducting a survey to gain information about how and when youth are participating in dependency and neglect hearings. As a stakeholder in the Colorado child welfare system, your input is critical to our understanding of youth participation throughout the state.

Below is a link to the survey which will take approximately 5 minutes to complete. All responses will be anonymous and reports will be published in the aggregate. The survey will close two weeks from today.

CLICK HERE TO TAKE THE SURVEY

Please let me know if you have any additional questions about this project.

Linda Weinerman
Executive Director
Office of the Child's Representative
303-860-1517 ext 105

APPENDIX B

INFORMED CONSENT FORM
Youth in Court

You are being invited to participate in a study that is being conducted by Colorado Office of the Child's Representative in collaboration with the University of Denver Colorado Women's College. The purpose of the study is to gather information about how and when children/youth are participating in dependency and neglect (D&N) hearings. In addition, this study is being conducted to fulfill the requirements of a thesis project for a class at University of Denver Colorado Women's College (Law and Society Capstone I & II).

The study is conducted by an undergraduate student, Genevieve Rotella. Results will be used to inform the Office of the Child's Representative and to receive a grade in the course. The student can be reached at the following email address: genevieverotella@comcast.net. This project is supervised by the course instructor, Tiffani Lennon, JD, Law and Society Chair, University of Denver, Denver, CO 80208, who can be reached by phone at (303) 871-6812 or by email at tlennon@du.edu. You may also contact Amanda Donnelly, Staff Attorney, Office of the Child's Representative, Denver, Colorado 80203 by phone at 303-860-1517 x.110 or by email at amandadonnelly@coloradochildrep.org.

Participation in this study should take about 5 minutes of your time. Participation will involve completion of an online survey consisting of multiple choice questions and a minimal number of open-ended response questions. Participation in this project is strictly voluntary. The risks associated with this project are minimal. If, however, you experience discomfort, you may discontinue the survey at any time. Refusal to participate or withdrawal from participation will involve no penalty or loss of benefits to which you are otherwise entitled.

Your response is anonymous and we will protect your confidentiality. All responses will be identified by code number only and no identifying information will be collected. The survey is designed to collect survey responses only, and the IP address of the computer used to complete the survey is not traceable. Researchers will not have access to your individual data and any reports generated as a result of this study will be reported in the aggregate. However, should any information contained in this study be the subject of a court order or lawful subpoena, the University of Denver might not be able to avoid compliance with the order or subpoena. Although no questions in this survey address it, we are required by law to tell you that if information is revealed concerning suicide, homicide, or child abuse and neglect, it is required by law that this be reported to the proper authorities.

If you have any concerns or complaints about how you were treated during the survey, please contact Paul Olk, Chair, Institutional Review Board for the Protection of Human Subjects, at 303-871-4531. Alternatively, you may email irbadmin@du.edu, Office of Research and Sponsored Programs, call 303-871-4050, or write to either at the University of Denver, Office of Research and Sponsored Programs, 2199 S. University Blvd., Denver, CO 80208-2121.

If you understand and agree to the above, please select "I understand and agree to the above," indicating your consent to participate in this study. If you do not understand any

part of the above, please contact the researcher with questions.

____ I understand and agree to the above. ____ I do not understand and agree to the above.

APPENDIX C
Survey

Please click on the following link to view a .pdf of the survey results:

Survey Results Summary

APPENDIX D
9th Judicial District Plan for Handling Dependency and Neglect Cases

The following is a list of attendance provisions for which each District Plan was evaluated. The list illustrates both inclusions and exclusions from the 9th Judicial District Plan, as it is the most comprehensive to-date. Click here to view the plan in its entirety.

Inclusions	Exclusions
Published Plan	Mission Statement
Recently updated -- Feb. 2014	Notification of hearings
Presumption of attendance	Designated professional responsible for child preparation prior to court appearances
Provision for judicial finding of reasonableness re: youth absence	Support person allowed to accompany youth to court proceedings
Notification of right to be heard	Youth-friendly waiting area
Notification provided may be provided by caseworker or GAL	Limited legal jargon and accessible language
Attendance policy	Removal of child/youth from court during "harmful" portions
Court-ordered transportation requirements	Time-certain hearings
Consultation defined Re: permanency planning hearings	Setting hearings around school hours
Consultation defined Re: other proceedings	Judicial training for interacting with youth
Consultation accomplished through GAL, caseworker	
Consultation may be accomplished via letter, fax, email, etc.	
in camera interviews	
Direct attendance explicitly permitted	
Appearance by telephone explicitly permitted	