

**Aging Out of Foster Care:  
Youth with Disabilities**

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**ADVOCACY**  
INCORPORATED

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**Common Federal Rights  
of Foster Youth**

- **Substantive and Procedural Due Process Claims**
  - *Olivia Y. v. Barbour*, 351 F.Supp 2d 543 (S.D. Miss. 2004)
    - Class of foster children filed §1983 lawsuit alleging that Mississippi Division of Family and Children’s Services placed foster children in danger and at risk of harm. Court-enforceable settlement agreement entered which reformed the whole foster care system.

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**Common Federal Rights  
of Foster Youth**

- **Private Right of Action Under the Adoption Assistance and Child Welfare Act**
  - *A.S.W. v. Mink*, 424 F.3d 970 (9th Cir. 2005)
    - Federal Adoption Assistance Program statute created a private right to individualized adoption assistance payment determinations that is enforceable under §1983.

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## Common Federal Rights of Foster Youth

- **Private Right of Action Under Medicaid Act**
  - *Kenny A. ex rel. Winn v. Perdue*, 281 F.R.D. 277 (N.D. Ga. 2003)
    - Foster children have privately enforceable rights under EPSDT Program of the ADA.
- **Claims under ADA and Section 504 of the Rehabilitation Act**
  - *Eric L., by and through Schierberl v. Bird*, 848 F.Supp. 303 (D. N.H. 1994)
    - Denied Motion to Dismiss claims that subclass of children had been subjected to discrimination based upon their disabilities.

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## Common Federal Rights of Foster Youth

- **Claims Under IDEA**
  - *Ramon H. v. Illinois State Bd. Of Educ.*, 1992 WL186248 (N.D. Ill. 1992)
    - State Education Agency required to ensure that foster children with disabilities are appointed surrogate parents.
- **Damage Actions Seeking Compensation for Constitutional Violations**
  - *Hernandez ex rel. Hernandez v. Texas Dep't of Protective and Regulatory Servs.*, 380 F.3d 872 (5th Cir. 2004); *K.H. through Murphy v. Morgan*, 914 F.2d 846 (7th Cir. 1990)

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## Common Federal Rights of Foster Youth

- See “Foster Care Litigation Docket” maintained by the National Center for Youth Law

[http://www.youthlaw.org/publications/fc\\_docket/alpha/](http://www.youthlaw.org/publications/fc_docket/alpha/)

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### **Rights of Youth 16 or Over in Foster Care**

- To attend Preparation for Adult Living (PAL) classes and activities as appropriate to my case plan.
- To a transition plan that includes career planning and assistance with enrolling in an educational or vocational job training program.
- To be informed of educational opportunities when I leave care.
- To assistance in obtaining an independent residency when aging out.
- To one or more Circle of Support Conference or Transition Planning Meeting.
- To participate in youth leadership development opportunities.
- To consent to all or some of my medical care as authorized by the court and based on my maturity level.

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### **Rights of Youth 16 or Over in Foster Care**

- To be free from pressure to get an abortion, relinquish my child for adoption, or to parent my child, if applicable.
- To be free of unnecessary or excessive medication.
- To request a court hearing for a court to determine if I have the capacity to consent to medical care (Sec. 266.010).
- To help with obtaining my driver's license, social security number, birth certificate, and state ID card.
- To seek appropriate employment, keep my own money and have a bank account in my own name, depending on my case plan and age or level of maturity.
- To receive necessary personal information within 30 days of leaving care, including my birth certificate, immunization records, and information contained in my education portfolio and health passport.

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### **Opportunities to Raise Aging Out Issues Within Context of CPS Case**

1. Initial Permanency Hearing
  - Within 180 days after the appointment of TDFPS as temporary managing conservator, the court must:
    - 1) Evaluate the parties' compliance with the service plan and whether TDFPS has made reasonable efforts;
    - 2) Evaluate whether the child's placement in substitute care meets the child's needs and recommends other plans or services to meet the child's special needs or circumstances; and
    - 3) **For foster child 16 or older, identify the services needed to assist the child in transition to adult life.**

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**Opportunities to Raise Aging Out Issues Within Context of CPS Case**

- 2. Placement Review Hearings
  - Under Tex. Fam. Code § 263.503, at least once every six months until the foster child is adopted or becomes an adult, the court must determine whether:
    - 1) The child's current placement is necessary, safe and appropriate for meeting the child's needs and in the best interest of the child;
    - 2) Efforts have been made to ensure that the child's placement is in the least restrictive environment consistent with the best interest and special needs of the child if the child is placed in institutional care;
    - 3) **The services that are needed to assist a child who is at least 16 in making the transition from foster care to independent living are available in the community;**
    - 4) Other plans or services are needed to meet the child's special needs or circumstances;
    - 5) The Department has exercised due diligence in attempting to place the child for adoption if parental rights have been terminated; and
    - 6) The Department has made reasonable efforts to finalize the permanency plan for the child.

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**Opportunities to Raise Aging Out Issues Within Context of CPS Case**

- 3. Motion for Further Temporary Orders
  - At any time prior to the entry of a final order, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child under Tex. Fam. Code § 105.001(a).

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**Opportunities to Raise Aging Out Issues Within Context of CPS Case**

- 4. Fair Hearing
  - A foster child has the right to a fair hearing to appeal the denial, reduction or termination of a service that he or she requested under 42 U.S.C. § 671(a)(12) and 40 Tex. Admin. Code § 700.310.

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

1. Foster Children with Mental Retardation
  - Have Department refer child to local MHMR Center for placement on HCS waiting list.
  - Annually, caseworker should check status on HCS waiting list.
  - If a child's placement is changed, make sure the child is still on HCS waiting list.
  - If child does not get an HCS slot at 18 from Texas Department of Aging & Disability Services, seek one of the HCS slots the Department gets from the legislature.

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

2. Can't wait until youth with disabilities is 17 to start looking for permanent placement
  - Children who are medically fragile or with significant disabilities are placed in nursing homes or state schools.
  - Contact EveryChild, Inc. 1-877-742-8844 [www.everychildtexas.org](http://www.everychildtexas.org)

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

3. Youth with mental illness/severe emotional disturbances
  - These youth often bounce between RTCs, placed in shelters and caseworker's offices.
  - Child placing agencies often do not want these youth.
  - Compel Department to go through child's case records and look for relatives .
  - Get these relatives licensed as foster parents.

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 4. School districts have a duty to develop transition plans for youth with disabilities
  - Beginning when a youth with disabilities is 16, and updated annually thereafter, the ARD committee must develop:
    - Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate independent living shelters;
    - The transition services (including courses of study) needed to assist the child in reaching those goals; and
    - Beginning one year before a youth turns 18, a statement that the youth has been informed of his rights under IDEA, if any, that will transfer to the youth at the age of 18. 20 U.S.C. § 1414(d)(1)(A)(i)(VII).

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 5. Apply for SSI before youth age out
  - Social Security Card
  - Photo IDs

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 6. Guardianship
  - APS/DADS will only seek guardianships for youth with mental retardation.
  - Court Initiated Guardianships. Tex. Prob. Code §§ 683 and 683(A)
  - Have Department send letter to probate court.

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 7. PAL is not appropriate for youth with disabilities
  - Seek youth placed in Independent Living Programs
  - LifeWorks – (512) 735-2400 [www.lifeworksweb.org](http://www.lifeworksweb.org)

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 8. Refer youth to Texas Department of Assistive & Rehabilitative Services
  - Vocational Rehabilitative Programs
  - Transition Planning
  - Supported Employment
  - Independent Living Services

If denied DARS services, contact Advocacy, Inc. for help through its Client Assistance Program (CAP). Contact South Texas Regional Office at :

6800 Park Ten Blvd.  
Suite 208-N  
San Antonio, Texas 78213  
(210) 737-0499 Phone  
(210) 737-2403 Fax  
[www.advocacyinc.org](http://www.advocacyinc.org)

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**Practical Tips in Representing Youth with Disabilities Who Are Aging Out of Foster Care**

- 9. Continuing Jurisdiction Beyond 18
  - Department has duty to provide for care of youth until 21 if youth is in school or vocational training program.

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**H.B. No. 704**  
**By: Rep. Rose**

Section 1. Subchapter F, Chapter 263, Family Code, is amended by adding Section 263.504 to read as follows:

Sec. 263.504. Extended Jurisdiction After Child's 18th Birthday. (a) If the department has been named as a child's managing conservator and the child remains in substitute care on the child's 18th birthday or receives services from the department after the child's 18th birthday, the court may render an order that continues the court's jurisdiction of the child if:

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**H.B. No. 704**  
**By: Rep. Rose**

(1) the court finds that the child is subject to the court's jurisdiction under a suit affecting the parent-child relationship filed by the department before the child's 18th birthday and the child consents to or requests an extension of the court's jurisdiction after the child's 18th birthday; or

(2) on the court's own motion, the court determines that the child is substantially unable to provide for the child's own food, clothing, or shelter because of a mental or physical disability.

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**H.B. No. 704**  
**By: Rep. Rose**

(b) The extended jurisdiction of the court terminates on the earliest of:

(1) the child's 21st birthday;

(2) the date the child withdraws consent to the extension of the court's jurisdiction in writing or in court, if the court extends jurisdiction under Subsection (a)(1); or

(3) the date the court determines that the child is able to provide for the child's own food, clothing, or shelter, if the court extends jurisdiction under Subsection (a)(2).

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**H.B. No. 704**  
**By: Rep. Rose**

(c) If the court's jurisdiction is extended, the court may continue to hold periodic review hearings under this section or may schedule a hearing on request of the child, the child's attorney, or the child's guardian ad litem or volunteer advocate.

(d) The court may continue the appointment or renew the appointment of a guardian ad litem, volunteer advocate, or attorney at litem for the child on request of the child.

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**H.B. No. 704**  
**By: Rep. Rose**

(e) In any review hearing held under this section, the court shall determine whether:

(1) the child's current placement is necessary, safe, and appropriate for meeting the child's needs and continues to be appropriate and in the best interest of the child;

(2) if the child is placed in institutional care, efforts have been made to ensure placement of the child in the least restrictive environment consistent with the best interest and special needs of the child;

(3) the services that are needed to assist the child in making the transition from substitute care to independent living are available in the community;

(4) other plans or services are needed to meet the child's special needs or circumstances; and

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**H.B. No. 704**  
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(5) the department has:

(A) exercised due diligence in providing the child with services identified in the service plan; and

(B) made reasonable efforts to develop the child's service plan after consulting with the child.

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