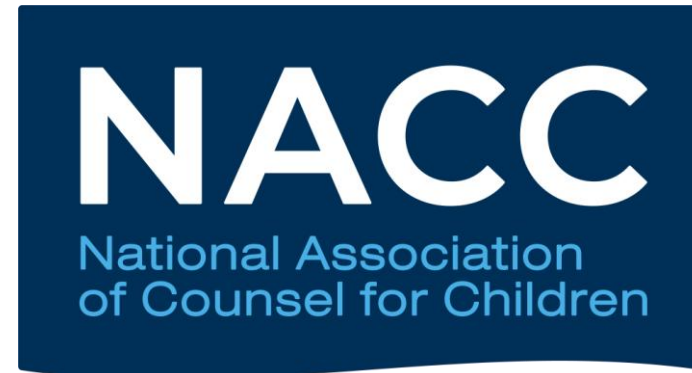


# High Quality Legal Representation for Youth in Foster Care

Natalece Washington, JD, CWLS  
NACC Policy Counsel



# Natalece Washington, JD, CWLS

## Policy Counsel, NACC

- ▶ Counsel for Kids Campaign
- ▶ Seen, Heard, and Represented  
Policymakers Guide to Counsel for  
Kids
- ▶ Technical Assistance Application



# Workshop Roadmap

- Empowering youth
- Legal interests of youth in foster care
- National landscape of right to counsel for youth in foster care
- Impact of high-quality legal representation



# Children and youth in foster care have an array of legal needs that require legal advocacy and protection.

- ▶ Disruption of their right to family integrity
- ▶ Inability to navigate complex court proceedings independently
- ▶ Insufficient provision of family time
- ▶ Inadequate efforts to identify potential kin caregivers
- ▶ Unreasonable placement apart from siblings
- ▶ Unnecessarily restrictive foster care placements
- ▶ School instability
- ▶ Unmet physical and mental health needs
- ▶ Untimely immigration assistance
- ▶ Delays in finalizing their permanency plan
- ▶ Potential abuse and neglect in foster care

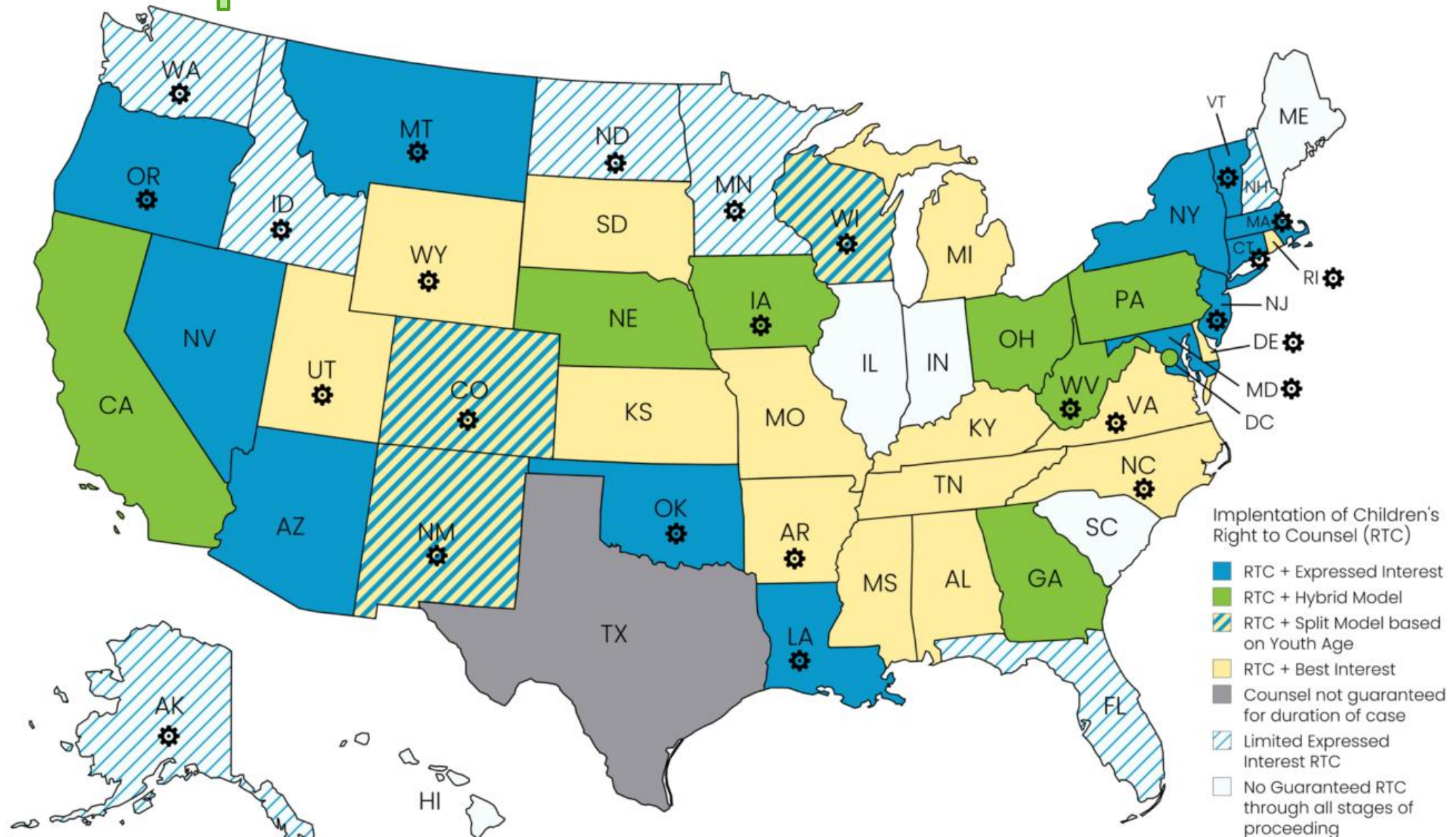
# Broad National Consensus

- The federal government, the American Bar Association (ABA), the National Council of Juvenile and Family Court Judges (NCJFCJ), and youth with lived experience in the child welfare system agree that **all children subject to child welfare court proceedings should have legal representation throughout the pendency of their case.**
- 13 states leave youth to navigate complex child welfare proceedings without legal assistance.





# Implementation of Counsel for Kids



# Empowering youth

61% of youth did not know their rights while in foster care

34% of youth felt not worthy of having rights

99% agreed rights should be reviewed on an ongoing basis

30% said their attorney supported them in advocating for themselves

**YOUR CASE, YOUR RIGHTS:  
YOUR GUIDE TO EXERCISING  
SELF-ADVOCACY**



**NACC**  
National Association  
of Counsel for Children

**The NACC Companion Guide to  
Your Foster Youth Bill of Rights**

[Your Case, Your Rights: Your Guide to  
Exercising Self-Advocacy](#)

*[W]hen the child's case is heard he is often without a voice. He has no one advocating for his desires, wishes, or hopes. His views are not considered equal to the views of his parents, caregivers, or the state. In some jurisdictions, his opinion about his life, including where he wants to live, whether he can see his parents and/or siblings, or where he should go to school, are not considered at all.*

A Lawyer for Every Child: Client-Directed Representation in Dependency Cases, Lashanda Taylor 47 Fam. Ct. Rev. 605

## **The System Designed to Protect Children and Youth Often Ignores Them**

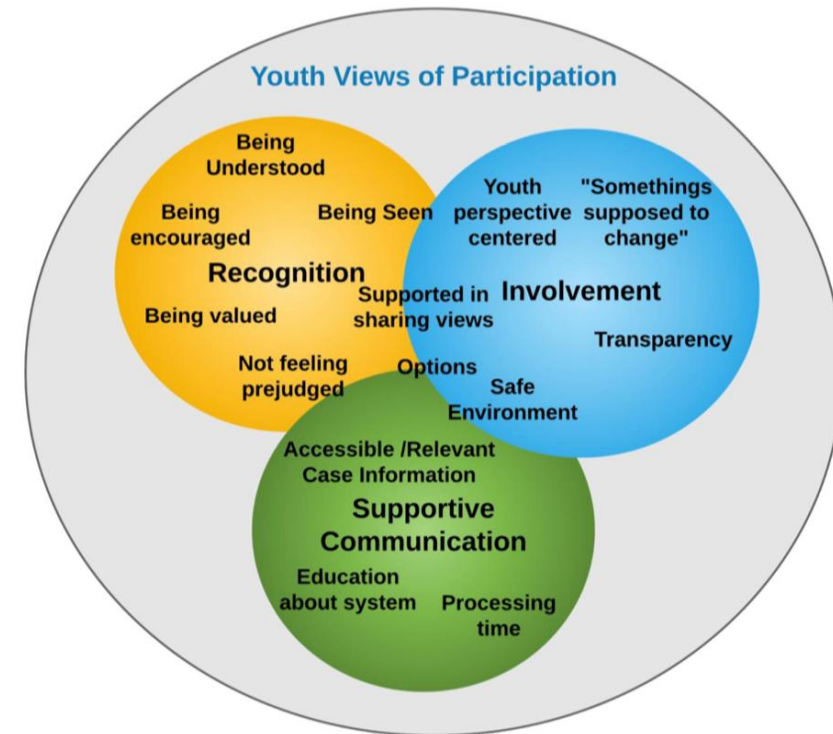




# Youth Should Be Seen & Heard

Persons with lived experience in the child welfare system overwhelmingly indicate a desire to:

- Be heard;
- Be engaged in their legal proceedings;
- Be told what is happening in their case.



Cody, Anna. "Children's Participation Rights in Child Welfare Systems: Identifying Opportunities for Implementation." <https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=7617&context=etd>

# Without Counsel Children Are Effectively Denied Access to Dependency Court

Fairness requires children in dependency court to be guaranteed lawyers just as children in juvenile justice proceedings.

A “child requires the guiding hand of counsel at every step in the proceedings against him.”  
In re Gault, 387 U.S. at 13

**Child  
Protection  
System**

# Youth Experience

**Juvenile  
Legal  
System**

***No federally  
recognized  
right to  
counsel***

Separated from their siblings,  
family, and community

...

Trauma

...

Decisions made by judges  
deeply impact their lives

...

Locked in restrictive  
institutional settings

...

Subjected to dangerous physical  
and chemical restraints

...

Prescribed Psychotropic  
Medications

...

***Constitutional  
right to the  
effective  
assistance  
of counsel***

# Liberty Interests at Stake in Dependency Cases for Children

- *[C]hildren have fundamental liberty interests at stake in deprivation and TPR proceedings. These include a child's interest in his or her own **safety, health, and well-being**, as well as an interest in **maintaining the integrity of the family unit** and in having a relationship with his or her biological parents. Kenny A. v. Perdue et. al., 356 F.Supp.2d 1353 (N.D. Ga. 2005)*







# Children's Right to Family Integrity Requires Procedural Protections

- **Family Integrity** is the right of the family as a unit to be free from arbitrary state interference.
- The fundamental right to family integrity is constitutionally protected by the Fourteenth Amendment meriting due process protection (see Wallis v. Spencer, 202 F.3d 1126, 1136 (9th Cir. 2000))
- Children's right to family integrity is at issue when the state acts through CPS to remove them from their families
- Children cannot be separated from their families without due process of law

Rachel Kennedy, A Child's Constitutional Right to Family Integrity and Counsel in Dependency Proceedings, 72 Emory L. J. 911 (2023).

# Models of Legal Representation of Children in Foster Care

## Client-Directed

Juvenile/Criminal Legal  
Child Protection/Immigration

- ↳ Advocates for the youth's expressed wishes
- ↳ Duties of loyalty and confidentiality
- ↳ Maximizes youth voice/client participation
- ↳ Recommended by the [American Bar Association](#), the [National Association of Counsel for Children](#), also [The Gault Center Standards](#)

## Best Interest

Child Protection  
Guardian/Attorney ad Litem

- ↳ Advocates for what the attorney thinks is in the youth's best interest after investigation, counseling
- ↳ Also the model for lay volunteers, Court Appointed Special Advocates (who may also be called Guardian ad Litem or GAL)

## Hybrid

Child Protection  
Guardian/Attorney ad Litem

- ↳ Advocates for both the child or youth's expressed wishes and what the attorney thinks is in the child or youth's best interest
- ↳ If such a conflict between those positions develops, the roles are bifurcated and a second attorney is appointed.



## NACC Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Cases (2021)

NACC supports **expressed interest representation**

- ▶ Consistent with the ABA Model Act and the ABA Model Rules of Professional Conduct 1.2
- ▶ Provides greatest assurance of maximizing youth voice and minimizing attorney bias that exacerbate racial and ethnic disparities in the child welfare system.
- ▶ Attorney owes the same duties of professional responsibility (ex. loyalty, confidentiality, etc.) to the child client as would be due to an adult client.
- ▶ Involves active client counseling and investigation.
- ▶ May also be described as “stated interest” or “client directed” legal representation.

See [NACC Recommendations](#),  
[Counsel for Kids Client-Directed FAQ's](#)

# States Implementing a Client-Directed Model of Representation

## Client-directed Legal Counsel for all Children

- Arizona
- Connecticut
- Louisiana
- Massachusetts
- Montana
- Nevada
- New Jersey
- New York
- Oregon
- Vermont

## Client-Directed Legal Counsel for Children of a Certain Age, Competency, or Special Need.

- Alaska
- Colorado
- Florida
- Idaho
- Maryland
- Minnesota
- New Mexico
- North Dakota
- Oklahoma
- Washington
- Wisconsin





## Amplifying Youth Voice

A client-directed model of representation recognizes that youth are experts about their own lives and well-situated to provide comprehensive and accurate information to shape the judicial officer's decisions.



**CASA/Guardian *ad litem*  
Volunteers**

“The eyes and ears of the court”

# Volunteer CASA/GAL's Role



- Child Advocate
- Investigator
- Information Gathering
- Make Recommendations
- Monitor progress and case oversight
- Courtroom Advocacy/Testimony
- Objective Reporting
- Advocate for a Safe Environment
- Supportive Role
- Collaboration with other parties, stakeholders, etc.



## Role of the Judge

---

Courts make a variety of decisions that affect children, including placement and custody determinations, safety and permanency planning, and proceedings for termination of parental rights. Whenever a court makes such a determination, **judges must weigh whether the decision will be in the "best interests" of the child.**

[https://www.childwelfare.gov/pubpdfs/best\\_interest.pdf](https://www.childwelfare.gov/pubpdfs/best_interest.pdf)



# Why High-Quality Legal Representation?

Access to justice



Enhanced quality of court proceedings

Better outcomes

System accountability

# High Quality Legal Representation

- ▶ Mandatory Ongoing Training
- ▶ Standards of Practice
- ▶ Multi-Disciplinary Teams
- ▶ Peer Partners
- ▶ Centralized Law Offices
- ▶ Supervision and Oversight
- ▶ Reasonable Compensation
- ▶ Caseload Caps



# Key Findings on the Impact of High- Quality Legal Representation

Prevents the need for removal;

Expedites timelines to permanency;

Decreases placement changes and school moves

Promotes engagement in case planning, services, and court hearings;

Increases rates of kinship placements; and

Yields cost savings for government agencies.





“The Children’s Bureau (CB) strongly encourages all child welfare agencies and jurisdictions to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.”

Children’s Bureau, ACYF-CB-IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings, January 17, 2017,  
<https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>





## Children represented by attorneys experience:

- 45% higher reunification rate with their biological parents
- 30% reduction in the rate of placement moves and
- 65% reduction in the rate of school moves not associated with graduations.



Evaluation of the Washington State Dependent Child Legal Representation Program (2021). Washington State Center for Court Research.  
<https://secureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/11/DCLR-Report-2021.pdf>



# Expediting Permanency

Children represented by specially trained legal counsel are 40% more likely to exit the foster care system within their first six months.



Achieving permanency sooner increases cost savings



# Federal Funds Support Counsel for Kids

- In 2018, longstanding policy changed to allow title IV-E reimbursement for administrative costs of children's and parent's legal representation (Child Welfare Policy Manual 8.1B, Question 30)
- Administrative costs may include: costs of paralegals, investigators, peer partners, social workers, support staff, and overhead for independent child and parent legal representation.
- **New Rule (May 10, 2024)**- Federal regulation expands Title IV-E to allow reimbursement for the costs of legal representation of tribes/Indian custodians in state court proceedings, kin caregivers, and civil legal proceedings, including pre-petition. (effective 7/9/24)
- [NACC Tip Sheet on Leveraging Title IV-E Funds](#)

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# Questions?

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[www.naccchildaw.org](http://www.naccchildaw.org)

