

# NEW COLORADO STATUTE PROVIDING ALL CHILDREN/YOUTH WITH D&N CASES THE RIGHT TO ATTEND AND FULLY PARTICIPATE IN THEIR COURT HEARINGS

*The why, what, and how*



COLORADO OFFICE OF  
**THE CHILD'S  
REPRESENTATIVE**



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*Introductions*

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### WHY?

*Two (of many) reasons for children/youth with D&N cases to attend and fully participate in their court hearings*

III.

### WHAT?

*New Colorado statute providing all Colorado children/youth with D&N cases the right to attend and fully participate in their court hearings...plus related statutory and CJD language*

IV.

### HOW?

*Tips and tools for implementing new Colorado statute providing all Colorado children/youth with D&N cases the right to attend and fully participate in their court hearings...plus related statutory and CJD language*

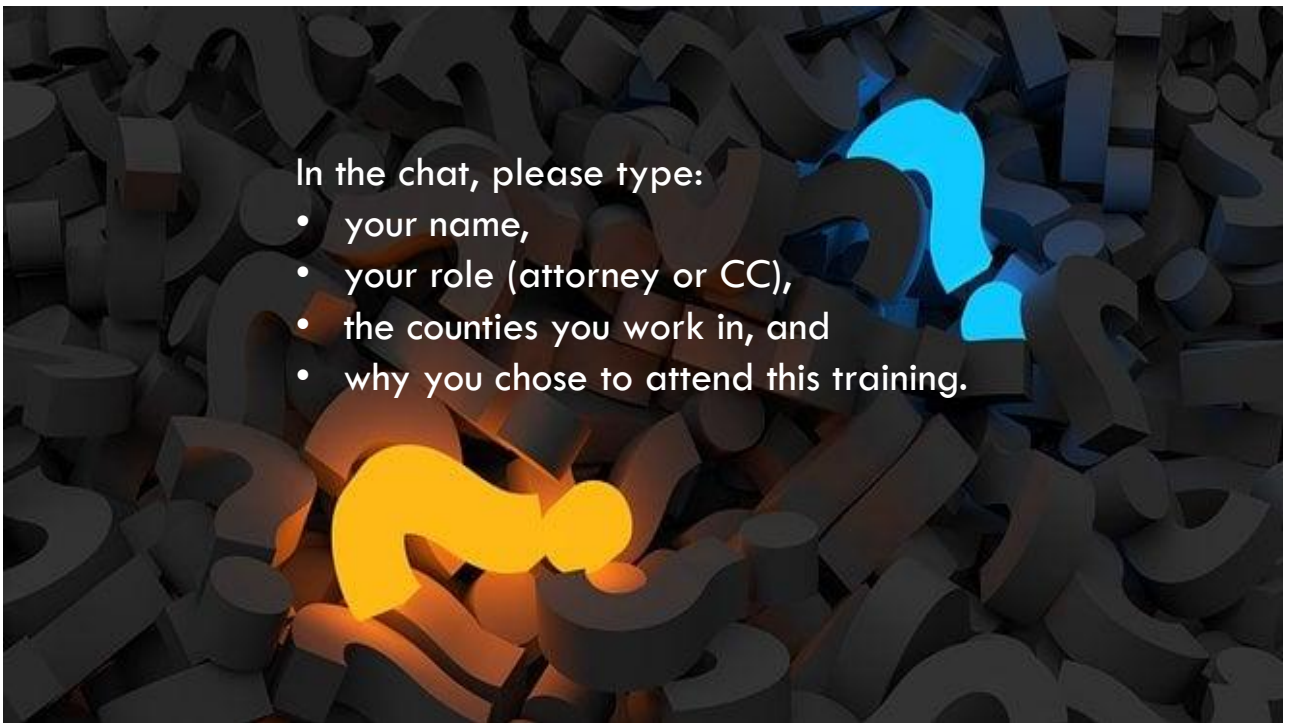


## GOAL

Participants will leave this session feeling ***inspired and prepared*** to implement the new Colorado statute providing all children/youth with D&N cases the right to attend and fully participate in their court hearings...plus related statutes and CJD language.

# I. WHO?

*Introductions*



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## OCR LIVED EXPERTS ACTION PANEL (LEAP) MEMBER ELIZABETH

Elizabeth is a young adult who grew up in the foster care system since the age of 12 but has successfully accomplished her goal of emancipating and moving out on her own at the age of 18. She is also part of LEAP who are all working together to help make the changes needed in the system to help more young adults to be successful. Elizabeth is currently part-time working and part-time schooling. She goes to Community College of Denver planning to transfer to Colorado University of Boulder and major in Political Science for a bachelor's degree. Later hoping to go to law school and either become an Immigration Attorney or a Guardian Ad Litem, Elizabeth would most of all love to make an impact in people's lives who are living through the foster care system and say that you can always do it and to never give up



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## II. WHY?

*Two (of the many) reasons for children/youth with D&N cases to attend and fully participate in their court hearings*

**A. MANY COLORADO CHILDREN/  
YOUTH WITH D&N CASES  
WANT TO ATTEND AND FULLY  
PARTICIPATE IN THEIR COURT  
HEARINGS.**





Elizabeth wanted (and still wants to) attend and fully participate in her court hearings.



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## Most youth surveyed by OCR wanted to attend their court hearings.

**61% of surveyed youth indicated that they always or usually wanted to attend court.**

20% indicated that they sometimes wanted to attend court.

19% indicated that they never wanted to attend court.



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## Youth comments from OCR surveys and focus groups

"I like going to court.  
It keeps me updated about my  
case."

"They wouldn't let me in the courtroom to hear my dad talking about what he did to me and my brother. I deserved to know what was going on. I wanted to hear my dad talk about what he did to me and my brother and see if he showed regret and understood what he did."

When another youth responded, "they probably didn't want to upset you," the original youth replied, "I've already been through it."

It's our loves,  
We know our story best.  
It may be a GAL's or a  
caseworker's job,  
but it's our lives."

"It's our case.  
It is about us.  
If someone can't say  
something in front of us, they  
shouldn't say it at all."

"I was not allowed in a  
meeting for 30 minutes.  
It made me wonder what kind  
of secrets they were telling.  
They were laughing, with me  
outside the room."

**B. NATIONAL ORGANIZATIONS SUPPORT  
CHILDREN/YOUTH WITH D&N CASES  
ATTENDING AND FULLY PARTICIPATING IN  
THEIR COURT HEARINGS.**

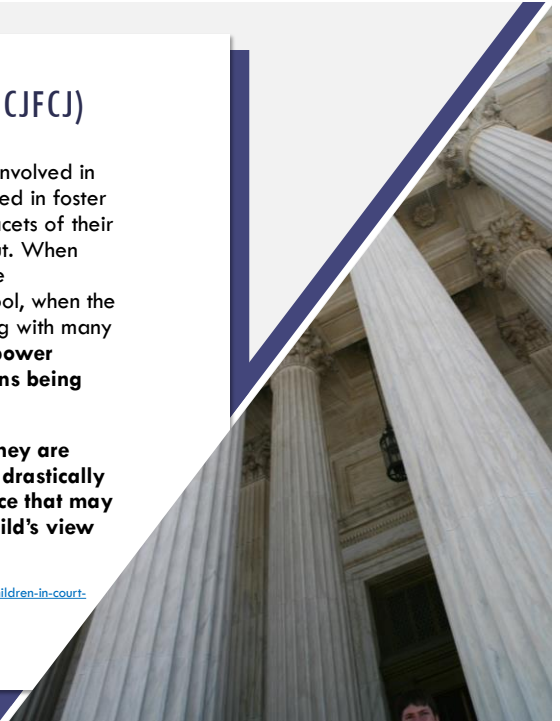


## National Council of Family Court Judges (NCJFCJ)

“Children’s lives are turned upside down when they become involved in the child welfare system, most especially when they are placed in foster care. They often lose control and predictability over many facets of their day-to-day lives. Decisions are often made without their input. When court actions are filed, judges decide where the child will live temporarily and permanently, where the child will go to school, when the child will see his parents, siblings, and extended family, along with many other decisions about the child’s well-being. **Judges can empower children by ensuring every child has a voice in the decisions being made about and for them in dependency court.**

**When judges observe and interact with children in court, they are powerfully reminded how the young person’s life is being drastically affected. When children participate, judges receive evidence that may not otherwise be available to help them understand the child’s view about a variety of issues that directly affect their lives.**

NCJFCJ Policy on Children in Court <https://www.ncjfcj.org/wp-content/uploads/2019/08/ncjfcj-children-in-court-policy-statement.pdf>.



## American Bar Association (ABA)

Recent resolution urges all legislatures to enact, all courts to enforce, and all stakeholders to safeguard and advocate for, laws establishing a **presumption of child presence in all D&N proceedings** to ensure that:

- (1) “legal decisions and practices **respect and value a child’s unique identity**, including their racial, cultural, ethnic, linguistic, sexual orientation, and gender identities; [and]
- (2) **the child can express their individual needs and interests and meaningfully engage in a case**”[.]

ABA resolution 613 [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/aba-resolution-613.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-resolution-613.pdf).

## National Association of Counsel for Children (NACC)

“Attorneys for children and youth should **proactively ensure opportunity for meaningful participation in court hearings and other case events.**

Comment: Children and youth in dependency proceedings should have the opportunity to **personally express their wishes to the court and to fully participate in legal proceedings, meetings, and other case events.”**

NACC *Recommendations for Legal Representation of children and Youth in Neglect and Abuse Proceedings*, p. 16, available at <https://naccchildlaw.app.box.com/s/vsg6w5g2i8je6jrut3ae0zjt2fvgltsn>.

Despite these (and other) inspirational and compelling reasons for children/youth to attend and fully participate in their D&N court hearings, the rates of child/youth court attendance in Colorado is low.

The most recent Youth in Court Report indicates that ***only 19.4% of children/youth aged 12 and older attended benchmark, permanency, and review hearings during the first quarter of this fiscal year.***



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### III. WHAT?

*New Colorado statute providing all children/youth with D&N cases the right to attend and fully participate in their court hearings...plus related statutory and CJD language*

## A. NEW COLORADO STATUTE PROVIDING ALL CHILDREN WITH D&N CASES THE RIGHT TO ATTEND AND FULLY PARTICIPATE IN THEIR COURT HEARINGS



### Old statutes (which will remain in effect after 1/9/2023)

- Even when a court excludes the general public from a hearing (based upon a determination that doing so is in the best interests of the child or community), the court must admit such persons as have in interest in the case, including persons whom the child wishes to be present. C.R.S. 19-1-106(1).
- During Permanency Planning Hearings, courts must consult with children/youth in a developmentally appropriate manner regarding their permanency goal. C.R.S. 19-3-702(1). Courts must ask children/youth about their desired permanency outcome when considering other planned permanent living arrangements. C.R.S. 19-3-702(4)(a)(VI)(D).



### New statute (which becomes effective on 1/9/2023)

***“A child named in the petition shall be a party to the proceedings and have the right to attend and fully participate in all hearings related to the child’s case.”***  
C.R.S. 19-3-502(4.5).

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**B. RELATED STATUTORY AND CJD LANGUAGE: GALs AND CFY MUST PROVIDE CHILDREN/YOUTH DEVELOPMENTALLY APPROPRIATE NOTICE OF COURT HEARINGS.**

A child's/youth's GAL or CFY shall provide the child/youth with ***developmentally appropriate notice of all hearings related to the child's case.*** C.R.S. 19-3-501(4.5) and CJD 04-06.V.D.1.b.



## C. RELATED CJD LANGUAGE: GAL/CFY REQUIREMENTS RELATED TO CHILDREN'S/ YOUTH'S RIGHT TO ATTEND AND FULLY PARTICIPATE IN THEIR COURT HEARINGS



### CJD effective until 1/9/2023

"When ascertaining the child's position regarding issues before the court, the GAL shall endeavor to maximize the child's involvement in the court proceedings, when consistent with the child's best interests, by discussing the court process, ascertaining whether the child wishes to appear in court and identifying and advocating for the elimination of barriers to the child's attendance at court. The GAL should conduct a post-hearing follow up with the child regarding the outcome of the hearing and, if applicable, the child's experience at the hearing." Commentary to CJD 04-06.V.D.1.

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### CJD effective on 1/9/2023

GALs and CFY must "advance the child or youth's right to attend and meaningfully participate in court hearings by":

- **discussing** the court process,
- **explaining** the child's/youth's right to attend court and the benefits of attending court,
- **identifying** barriers to court attendance and participation and advocating for the elimination of those barriers, and
- **conducting** a post-hearing follow up with the child/youth regarding the outcome of the hearing and the child's/youth's experience at the hearing (if applicable).

CJD 04-06V.D.1.b.

## IV. HOW?

*Tips and tools for implementing the new Colorado statute providing all children/youth with D&N cases the right to attend and fully participate in their court hearings...plus related statutory and CJD language*

## A. PROVIDE DEVELOPMENTALLY APPROPRIATE NOTICE OF THE HEARING.



### Requirement

A child's GAL or CFY must provide the child with **developmentally appropriate notice of all hearings** related to the child's case. C.R.S. 19-3-501(4.5) and CJD 04-06.V.D.1.b.

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### Tips

- What Elizabeth said. 😊
- Content: Date, time, location, purpose, and the right to fully participate.
- "Developmentally appropriate": ***"What timing, content, and method of notice does this child/youth want/need to understand and make informed decisions about their right to attend and fully participate in this hearing?"***
- Methods: In-person, in writing, telephone call, and/or text. Ask the child/youth what method(s) they prefer.



### Tools

- "Court process visual" in today's materials.
- "Notice visual" in today's materials.
- Dependency and Neglect (D&N) Case Timeline" in the LT.

## B. DISCUSS THE COURT PROCESS.



### Requirement

GALs and CFY must “advance the child or youth’s right to attend and meaningfully participate in court hearings by” [...] **discussing the court process**. CJD 04-06V.D.1.b.

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### Tips

- What Elizabeth said. 😊
- Discuss the process broadly, then each hearing specifically before each hearing.
- Answer all questions.



### Tools

- "Court process visual" in today's materials.
- "Notice visual" in today's materials.
- Dependency and Neglect (D&N) Case Timeline" in the LT.
- Youth Toolkit and court video on OCR's online Youth Center.
- Articles and resources on OCR's Other Stakeholder's Center.
- "Child/Youth and GAL/CFY Participation in County Meetings/Processes" in the LT.
- "Common D&N Abbreviations and Acronyms" in the LT.



## C. EXPLAIN THE CHILD'S/YOUTH'S RIGHT TO ATTEND COURT AND THE BENEFITS OF ATTENDING COURT.



### Requirement

GALs and CFY must “advance the child or youth's right to attend and meaningfully participate in court hearings by” [...] ***explaining the child's/youth's right to attend court and the benefits of attending court.***  
CJD 04-06V.D.1.b.

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### Tips

- What Elizabeth just said. ☺
- Benefits include seeing how the court system works, meeting the parties/attorneys who will make recommendations about your life, meeting the judicial officer who make decisions about your life, hearing why the parties make their recommendations and why the judicial officer made the decisions the judicial officer made, providing/receiving current information about you/your case, and learning/practicing self-advocacy.



### Tools

- This PowerPoint – OCR surveys and focus group comments indicating youth wanted to attend and fully participate in court, national policies.
- Testimony of folks with lived expertise in support of HB22-1038 on OCR's website.
- OCR's Other Stakeholder's Center, which includes infographics for "Supporting and Promoting Youth Court Attendance" and "Youth in Court Mythbusters. Also includes ABA Branch Cards for Engaging Children/Youth (at various ages) in the Courtroom.

## D. IDENTIFY THE BARRIERS TO COURT ATTENDANCE AND PARTICIPATION AND ADVOCATE FOR THE ELIMINATION OF THOSE BARRIERS.



### Requirement

GALs and CFY must “advance the child or youth’s right to attend and meaningfully participate in court hearings by” [...] ***identifying barriers to court attendance and participation and advocating for the elimination of those barriers.*** CJD 04-06V.D.1.b.

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### Tips

- In Best Practice Court Teams/etc., ask courts to set dockets after school hours and/or time-specific dockets instead of rolling dockets. Encourage your district to request a district-specific chat with OCR about their youth-in court-related data, strengths, and opportunities for growth.
- As the child/youth if they would like to go on a tour of the courthouse and the courtroom. If yes, complete that tour. Introduce them to stakeholders. Show them where people usually sit and what their roles are. Ask them where they would like to sit. Answer their questions.
- Bring a fidget for the child/youth.
- Consider whether the child/youth would be willing to appear in-person, virtually, or by telephone.
- Consider whether the hearing could be bifurcated.
- See the next few slides for more tips and tools.



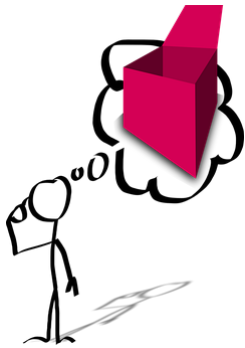
### Tools

- Motion for transportation in today's materials.
- Youth in Court Mythbusters on OCR's website.
- Supporting Youth in Court infographic on OCR's website.
- ABA Benchcards for engaging with youth on OCR's website.
- Court video on OCR's website.
- See the next few slides for more tips and tools.

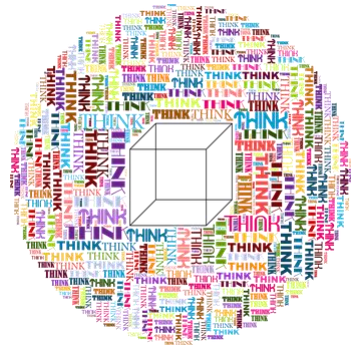
Learn the reason why  
the child/youth does not want to attend court.

WHY

Once you learn the reason why the child/youth does not want to attend court, eliminate the reason/barrier.



Be creative!  
Think outside the box!



## Some barriers to child/youth court participation and tips and tools to advocate for elimination of those barriers

Barriers	Tips and Tools
Child/youth does not want to attend court.	<ul style="list-style-type: none"> <li>• <b>Ask why</b>/explore the barriers to the child's/youth's court attendance, then advocate for the elimination of those barriers. Remember that children may have persons they wish present at hearings. C.R.S. 19-1-106(2). Think about whether the child/youth would like to bring a support item like a blanket or stuffed animal. Consider bifurcated hearings and/or <i>in camera</i> interviews. bifurcated hearings, etc.</li> <li>• <b>Repeat the first bullet point</b> multiple times throughout cases.</li> <li>• <b>Spend time</b> with the child/youth: OCR youth surveys indicated that children/youth who had frequent contact with their attorney were more likely to want to attend court.</li> </ul>
Child/youth has school.	<p><b>Ask the child/youth</b> if they want to attend school or the hearing. If the child/youth says they want to attend school, <b>ask why/explore the barriers</b> to their court attendance. <b>Advocate for the elimination of those barriers.</b> <b>Ask the court</b> to schedule the hearing when school is not in session; before or after school; or during lunch, recess, or an elective. <b>Consider whether</b> you can appear virtually with the youth from school. Consider whether the youth can appear virtually from school</p>
No one is willing to provide transportation.	<ul style="list-style-type: none"> <li>• <b>Ask</b> the child/youth about their transportation preferences. <b>Discuss</b> options such as department staff; relatives, kin, kinlike individuals, and placements (with or without department payment or other assistance); or HopSkipDrive. Uber, Lyft, taxi, or bus with a trusted and safe companion. If you have not heard of HopSkipDrive, check out <a href="https://www.hopskipdrive.com">https://www.hopskipdrive.com</a>.]</li> <li>• At every hearing, <b>ask the court</b> to issue transportation orders for the next hearing.</li> <li>• <b>File a motion</b> for an order requiring someone to provide transportation.</li> </ul>

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## Initial Shelter Care Hearings

In Best Practice Court Team Meetings and other communications with stakeholders, **advocate** for early GAL/CFY appointments, early GAL/CFY notification of children's/youth's name(s) and contact information, and that children/youth be transported to court.

If a child/youth is not physically present, call them. **Share** the date, time, and location of the hearing; the purpose of the hearing, and their right to fully participate in the hearing. **Ask** if they would like to, are available to, and have the means necessary to appear for the hearing in person, virtually, or by telephone. **Discuss** the issues before the court.

If you cannot contact the child/youth before the hearing, **ask** the court to set the next hearing ASAP so you can get the child's/youth's position (CFY) and/or determine the best interests of the child/youth (GAL) and request necessary orders. If denied, request permission to file emergency motions related to the child's/youth's positions (CFY) and/or best interests (GAL).

## *In camera* interviews

***In camera* interviews can still occur.** HB22-1038 did not change C.R.S. 19-3-106(5), which authorizes *in camera* interviews of children. Additionally, HB 22-1038 did not change the reasons for *in camera* interviews of children, as articulated in *People in Interest of H.K.W.*, 417 P.3d 875, 879 (Colo. App. 2017) (“permitting an *in camera* interview with a child would enable the trial court to ascertain the child’s custodial preference while (1) lessening the ordeal for the child by eliminating the harm a child might suffer from exposure to the adversarial nature of the proceedings; (2) enhancing the child’s ability to be forthcoming; and (3) protecting the child from the ‘tug and pull’ of competing custodial interests.”)

- The procedural protections outlined in *H.K.W.*, 417 P.3d at 879 and *People in Interest of S.L.*, 421 P.3d 1207, 1217 (Colo. App. 2017) must be applied during every *in camera* interview (e.g., a record of the interview unless waived by the parties, record be made available upon request by any party, trial court discretion to determine whether counsel must be present during the interview, and trial courts should allow parents/their counsel to submit questions which trial courts may ask in their discretion).

### **GALs or CFYs may be present during *in camera* interviews.**

- Attorney GALs who are parties to D&N cases have been present during *in camera* interviews for some time. Why should the practice change now that the attorney is now a non-party CFY?
- C.R.P.C. 3.5(b) states that a lawyer shall not “communicate ex parte with a judge [...] during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge’s authority under a rule of judicial conduct.” Commentary 2 to CRPC 3.5(b) states, “[e]xamples of *ex parte* communications authorized under the first exception are restraining orders, submissions made *in camera* by order of the judge, and applications for search warrants and wiretaps.” *Ex Parte Communications between Children and Judges in Dependency Proceedings* available at [https://www.americanbar.org/content/dam/aba/publications/center\\_on\\_children\\_and\\_the\\_law/empowerment/ex\\_parte\\_communications.pdf](https://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/empowerment/ex_parte_communications.pdf) at 104-105 states that lawyers can accompany children in chambers when states have an ethics rule like C.R.P.C. 3.5(b). ***Best practice is to ask the court to enter specific orders regarding your participation in each in camera interview.***

## E. CONDUCT A POST-HEARING FOLLOW-UP WITH THE CHILD/YOUTH REGARDING THE OUTCOME OF THE HEARING AND THE CHILD'S/YOUTH'S EXPERIENCE AT THE HEARING (IF APPLICABLE)



### Requirement

GALs and CFY must “advance the child or youth’s right to attend and meaningfully participate in court hearings by” [...] ***conducting a post-hearing follow up with the child/youth regarding the outcome of the hearing and the child’s/youth’s experience at the hearing (if applicable).***  
CJD 04-06V.D.1.b.

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### Tips

- What Elizabeth just said. 😊
- Discuss who the people in the courtroom were, what happened during the hearing and why, as well as what the child/youth observed/felt during the hearing.
- Ask the child/youth if anything could have been done to make their experience more enjoyable/helpful.



## Questions?

**Ask** your mentor, another attorney in your district, or your OCR Staff Attorney Liaison.

**Send** a question to your district listserv or the broader listserv.





Thank you.