

**Foster Parent Rights: A Review**  
**NYSCCC 26<sup>th</sup> Annual Conference**  
**Uniting Families • May 9, 2015**

**Questions from Foster Parents**  
Margaret A. Burt , copyright 3/13

**1. Does a foster parent have a right to speak with the child’s attorney?**

**NO** – The foster parent can ask to speak to the child’s attorney but since the attorney does not represent the foster parent, you cannot say that the foster parent has a “right” to speak to the child’s attorney. It is up to the child’s attorney to decide if he/she thinks it would be helpful in their representation of the child to speak with or listen to any information that the foster parent would like to provide. Most children’s attorneys would like to hear what the foster parent has to say on some critical issues like visitation for example. It can help to approach the attorney in a pleasant, non demanding way and ask if the attorney would like to talk about the child’s situation.

There is nothing improper about the foster parent asking the child’s attorney if he/she would like to talk unless the foster parent has an attorney representing them and then it would only be that attorney who should be talking to the child’s attorney. The child’s attorney is not obligated in any way by law or ethical requirements to speak with the foster parent but as indicated many want to and do.

**2. Does a child’s attorney have to come to the child’s foster home at some point?**

**NO** – There is no requirement anywhere in law, regulation or ethics that says an attorney has to ever visit the foster home or any home the child is in. However, many child’s attorneys will want to this. It can help to approach the attorney in a pleasant, non demanding way and ask the attorney if he/she would like to come out to the house and see the child there, see the child’s room, etc.

**3. What can a foster parent do if the child’s attorney has not seen or talked to the child?**

Do consider that it is possible that the child’s attorney has in fact seen or talked to the child and you are not aware of it – for example the attorney could have gone to the child’s school. If you are sure that the child’s attorney has not seen the child and it would appear that court appearances are coming up with no sign of meeting with the child, you could consider contacting (unless you have a lawyer in which case, the lawyer should do it) the child’s attorney and offering to bring the child to the attorney’s office or offering your home as a meeting place.

If the child is old enough, you could consider helping the child to telephone his/her attorney so the child can ask to meet or talk to him/her. It may be very important for the child to see his/her attorney before each permanency hearing to discuss if the child is going to go to court for the hearing and so the child can tell the attorney what, if anything they want presented to the Judge at the hearing, so that would be a critical time to urge contact. If the child is scheduled for a

permanency hearing and the hearing arrives and there has been no contact, you could consider letting the Judge know that the attorney has not seen the child. **Warning** – telling the Judge will not make the attorney feel very warm towards you, and I would strongly consider that only if you feel that you or the child had specifically asked to have the attorney see the child and they had not done so.

**4. I have been told by my county that I cannot say anything or put any photos about my foster child on Facebook. We consider this child as part of our family, why can't I treat him/her like part of my family when I post things?**

The law is quite clear that any public information about a foster child that is not related to something necessary like information to school authorities is a violation of confidentiality.

**5. My foster child's parent is incarcerated for many years. Doesn't that mean that the parent does not have any rights? Surely the child does not have to visit in a prison!**

In NYS, being incarcerated is not per se a reason to lose parental rights. Parents who are incarcerated are entitled to retain their parental rights to information about and to contact, including visits with their child. Caseworkers and agency do not have any legal authority to deny contact to an incarcerated parent and must in fact set up and arrange contact unless a Judge decides that it is not in the child's best interests.

**6. Why can't I cut my foster child's hair? - it looks terrible? Why does a birth parent get to say no to my foster child going on vacation with my family? - the poor child is not going to get to go with us to Disney!**

When a child is in foster care, the DSS has **custody** of that child, but unless the child is freed for adoption, the birth parents maintain their parental rights. This means that decisions about religion, schooling, significant medical issues and things like haircuts and leaving the state for vacations are things that the birth parent gets to make decisions about. The DSS is obligated to talk to birth parents about these types of issues and will generally have to abide by the parents decisions. Sometimes for very significant issues – like a child needing specific medication that a parent won't approve of - the DSS might decide to ask the court to issue an order and the court would allow the parent to make their argument and then make a decision.

**7. My foster child really does not like to go on visits with his mother and he tells everyone that. I don't blame him, the mother pretty much ignores him. Right before and right after visits, he really acts out. How old does a child have to be in order to refuse visits?**

There is no law in NYS that allows a child under 18 to “refuse” visits in a way that the court must honor. When a child is in foster care, the DSS with the foster family's cooperation, is supposed to provide visitation to the birth parents. Often the court will have also ordered the visitation to occur as well or might have specified how much visitation the parent is entitled to have. Only a Family Court Judge can actually order that there be no visitation with the parents and that can only happen where proof has been provided to the court that the child is actually being harmed by the visits; that there is an actual safety issue. Harmed does not mean that the

child does not want to go, or does not like it, or that the parent is not a pleasant person. It would have to be more than that. A judge might order visits stopped if a mental health professional testified credibly that the child was being emotionally damaged by the visits, for example. The caseworker and the foster parent should not let the child feel that when they are of a certain age they will be able to have a “choice” about going to visits. Legally a child cannot refuse visits until age 18.

**8. We are new foster parents and despite the training, we are really pretty shocked about how many problems and issues the birth parents have in these cases. Many of them are really hard core drug users and have mental health problems and a long history of really dysfunctional lives. How can courts possibly consider returning children to these very inadequate, unsafe homes when there are wonderful families who would love to adopt? We thought it was all about “the best interests of children” but in court it sure seems like it is all about the rights of these barely functioning parents.**

Birth parents have constitutionally protected rights to raise their children. NYS courts can remove children from homes where the court believes that this removal is necessary to protect the child from imminent danger to life or health. However, except in very limited situations where the court might rule otherwise, in the vast majority of cases where children are removed, the court and the DSS are required by law to engage in efforts to place the children back in the home with the birth parent(s). These efforts are to be aimed at the issues that resulted in the child being placed in care. The system expects foster parents to assist in that process.

It is the primary and preferred goal of the foster care system to return children home to birth families even though that home may not be an ideal one or one that has the advantages of the foster home. In the vast majority of cases of foster care placement in NYS, the children are returned home to birth parents. Foster parents need to understand that this will occur even in situations where it is arguable that the child would have more advantages if they were raised until adulthood by an adoptive family.