



Advocacy at DCF Administrative Hearings and Confidential Records in Child Protection Proceedings

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Today's Topics

- **Administrative Hearings**
 - Treatment Plan Hearings
 - Fair Hearings
 - “800” Hearings
- **Confidential Records**
- **Policy and Case Law Updates**



Zealous Advocacy at Administrative Level

Why is zealous advocacy critical?

- Important decisions made
- Modifications to plans as necessary
- Ensure client's voice is heard
- Protect client from adverse outcomes
- ADA compliant services
- Barriers to compliance
- Remember the Specific Steps!

In re: Elijah C., 326 Conn. 480 (2017)



Advocating for Services

- Go up DCF chain to Program Manager
- Ask Regional Mental Health Director for help
- Ask for Regional Resource Group (RRG) consult to make recommendations [DCF Policy 38-2]
- Get recommendations from expert or provider input from one already working with family



Administrative Advocacy

- **Treatment Plan Meetings**
- **Permanency Teaming** See DCF Policy §36-1 through 8; Child & Family Permanency Teaming Practice Guide
- **Administrative Case Reviews**
 - Parents, child (if over age 12), and attorneys for parents and child
 - DCF Updated Process for Consolidated ACR (*effective 9/1/2018*)
 - 21 day advance notice
 - Request final case plan and ACRI 30 days after meeting

See DCF Policy Manual § 36-11-2; DCF Case Planning Practice Guide at pp. 21-24

Administrative *Hearings*

- Treatment Plan Hearings
- Fair Hearings
 - “800” Hearings
- License Hearings
- Substantiation Hearings
- Removal Hearings

DCF Policy § 22-2 through § 22-12-8



Format of Hearings

- DCF Administrative Hearings Unit
Objective, non-partisan unit of Division of Quality Assurance
- Governed by CT Uniform Administrative Procedures Act
See CGSA § 4-166 to § 4-189
- Recorded due process hearing
- CGS §17a-15c
 - Contest case plan
 - Refusal of any service by DCF to which the child is entitled

Exercise: As Attorney for Minor Child

Your client in DCF care wants increased visitation with sibling not in DCF care. You have advocated unsuccessfully with DCF worker and supervisor. What can you do?

1. **File** motion in Court and appeal to Judge to increase sibling visitation
2. **Wait** until next ACR, coming up in a few months, to raise the issue again
3. **Call** for permanency teaming meeting
4. **File** request for an administrative hearing
5. **Combination** of above



Treatment Plan Hearings

- What can you challenge at Treatment Plan Hearing?
- Conducted in accordance with:
 - Uniform APA
 - CGS §17a-15
- How to request hearing
- Hearing provided within 30 days of receipt of request

See DCF Policy § 22-7-2 through § 22-7-8



Treatment Plan Hearings

- **Decision**

- Within 15 days of closing of hearing record

- **Right to Appeal**

- Request for review of any final decision made by appeal to Superior Court within 45 days, pursuant to CGS §4-183 and §17a-15
- Must notify DCF of intent to appeal within 30 days of hearing decision

See DCF Policy § 22-7-2 through § 22-7-8

Fair Hearings

Used to challenge DCF decisions to suspend, reduce, discontinue or deny:

- Benefits to a client receiving services in an out-of-home placement, i.e. foster care, independent living
- Special rate foster care payments
- Payment for exceptional expenses not covered by foster care rate
- Placement of out-of-state child with prospective caregiver in Connecticut (through ICPC process)

See DCF Policy § 22-4-2 through § 22-4-7; Conn. Gen. Stat. §17a-90 and §46b-129(f)

Exercise: Advocating for Adolescents

Your 17 year-old client is about to turn 18

- Can he remain in DCF care?
- As his attorney, what can you do to make sure he can remain in DCF care?
- What can you do to make sure he is prepared for independence?



Why Should We Care?

Common Outcomes for Youth Aging Out

- Homelessness
- Criminal justice involvement
- Cycle of DCF involvement for pregnant/parenting youth
- Lack of education
- Lack of employment

Common Issues Confronting Adolescents

- Mental health issues
- Substance abuse issues
- Complex trauma
- Lack of natural supports
- Need access to education/special education
- Involved with other systems (DDS, DMHAS)

Adolescent Services and Benefits

Permanency Plan for all youth age 16-18 must include DCF steps for

- Independent living skills
- Planning for secondary education or vocational program

Plan should address individualized needs

- Independent Living Skills
- Post High School Education, Financial Aid, Job Training
- Vocation
- Housing
- Medical Care, Health Insurance
- Community Resources
- Benefits

See CGS § 17a-15c

Adolescent Services and Benefits

- **Access to Adolescent Specialist**
- **Access to Secondary Education Program**
- **Assistance with driver's education/driver's license**
- **CHEER** (Community Housing Employment Enrichment Resources)
- **Case Management Services**
Budgeting, crisis intervention, community referral services, independent living plans/goals, ID permanent resources, assist with behavioral health issues/management/accessing care

See DCF Policy Chapter 42

Advocating for Adolescents in DCF Care

- Youth aged 16+ have the right to an **Adolescent Transition Plan**
- Shortly before 18th birthday, hold an **Adolescent Transition Plan Conference**
- **DCF - 779 form** – Agreement for Services Post-Majority
- **DCF - 800 form used for “uncooperative youth”**
 - Sent to last known address, and, if applicable, youth’s most recent caregiver, attorney and any person who may have knowledge of whereabouts
 - If youth chooses to appeal DCF decision to discontinue benefits, may request Fair Hearing pursuant to instructions on DCF - 800 form

See DCF Policy § 42-7

“800” Fair Hearing Statistics

<u>Year</u>	<u>Hearings Requested</u>	<u>Hearings Held</u>	<u>DCF</u>	<u>Youth</u>	<u>(Settled)</u>
• 2013	70	34	31	3	12
• 2014	62	29	26	3	17
• 2015	59	27	25	2	7
• 2016	63	29	24	5	18
• 2017	67	16	14	2	10

Difference between hearings requested and hearings held are those that were dismissed (no show, adolescent no longer requesting services), withdrawn, and otherwise settled.

Notice of 800 Hearing

- Submit request: complete back of 800-form and return to DCF Administrative Hearings Unit within 10 days
- Follow up with DCF Administrative Hearings Unit to ensure receipt
- Within 30 days, should receive letter with
 - Date/time/location of hearing
 - Notice of right to be represented by attorney at own expense
 - Copy of 800-form
 - Issues that will be contested
 - Hearing Officer's name, contact info
 - Instructions on how to postpone (up to 15 days) if needed
- DCF Summary of Facts re: contested issue to be forwarded by social worker

See DCF Policy § 22-4-2 to § 22-4-7

Preparing for 800 Hearing

- Releases signed by client
- Letter to DCF to request discovery.
Enclose client release and date records are needed.
 - Complete running narratives from time youth entered DCF care
 - Monthly reports and correspondence with providers
 - Email/memos with Central Office staff re: client's exit from DCF care
 - Service agreements, transition plans, adolescent discharge plans
 - CHAP agreement and case management reports
 - Post-Secondary Education plan
 - Medical and mental health records
 - Most recent IEP and educational evaluation
- Compose and submit response to DCF Statement of Facts

What to Bring to Hearing

- **Witnesses**
Subpoena if needed
- **Documentary evidence**
Submit copies to SW and Hearing Officer prior to hearing

**Negotiating a settlement is always preferable,
i.e. getting DCF to withdraw the 800 prior to hearing.**

Potential Exhibits for Hearing

- DCF 800-form
- Notice of Fair Hearing received
- DCF Statement of Facts (received after Notice)
- Attorney's Response to DCF Statement of Facts
- Relevant DCF narratives
- Relevant school documents (IEP, diploma, report cards, progress reports)
- Letters of support from service providers
- Relevant medical documentation, including diagnoses

The “800” Hearing

- Before the hearing, prepare client to testify
- During the hearing, Hearing Officer may administer oaths, take testimony under oath & require production of records
- Youth and DCF entitled to inspect/copy each other's evidence
- Parties have opportunities to respond, cross-examine witnesses, and present evidence and argument on all issues
- Rules of evidence are relaxed

See UAPA § 4-178

After “800” Hearing

- No ex parte communications with Hearing Officer
- Final decision rendered within 90 days following close of evidence (or date briefs are filed, if later)
 - If not, can appeal to Superior Court, Hartford for order requiring final decision
 - Decision to be in writing -- should contain findings of fact/conclusions of law, including specific statutes or regulations upon which DCF based decision
- If client prevails, need to renegotiate service agreement with DCF
- If client does not prevail, may file petition for reconsideration by DCF within 15 days; DCF to decide within 25 days UAPA § 4-181
- If administrative appeals are exhausted, may appeal to Superior Court within 45 days of mailing of final decision UAPA § 4-183

Exercise: Confidential Records

You are appointed to represent F as attorney for minor child

1. Upon appointment, what records would you want to obtain?

See CGSA § 17a-28

2. How would you obtain records?

3. Do you need release from parents?

See CGSA § 46b-129a(2)



Exercise: As Attorney for Minor Child

You want to be certain that court-ordered expert has all information needed to conduct thorough psychological evaluation of client and mother.

- Can you provide expert with
 - DCF records?
 - Court records such as social study?

Evaluation was terrible for client's position so you hire your own evaluator.

- What records/information can you provide your evaluator?

Protections for Court Records

Court record cannot be disclosed without court order

- **CGSA 46b-124**: not disclosed directly/indirectly to 3rd party except with court order
 - Only available to DCF, court employees, attorney for child, parent, parent's attorney, child 18+ or emancipated
- **PB 32a-7**: may not be reproduced in whole or part without court consent
 - Counsel and self represented parties have access without court consent

Protections for DCF Records

DCF record cannot be disclosed without written consent of person or court order

- PB 34a-21(f) move for permission to disclose



Confidential Records: Substance Abuse

- Practice Book Rule 32a-8
- 42 USC § 290dd-2; 42 CFR §§ 2.63 and 2.64
- CGS § 17a-688 creates statutory privilege for certain substance abuse treatment records, co-extensive with federal protection
- *See In re Marvin M*, 48 Conn. App. 568, 569 (1998)

Exercise: As Attorney for Respondent Mother

At trial on neglect petition, DCF offers into evidence records from your client's substance abuse program, including attendance records, drug test results, notes of conversations with substance abuse counselor. What do you do?

1. **Object!** to all of it - federal & state law protects substance abuse records
2. **Object!** on basis that client never signed HIPAA release. SA program violated federal law by turning documents over to DCF
3. **Object half-heartedly**, it's a losing fight. Specific Steps mandated that client sign release for DCF. Social study, case plan and DCF records already discuss SA program.
4. **None of the above**

Substance Abuse Records

Federal Law - Title 42 USC § 290dd-2 protects as confidential, records re ID, diagnosis, prognosis, treatment

- maintained in connection with any program relating to SA education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or assisted by any agency of the US
- Disclosure only if good cause

Good Cause -- Weigh public interest and need for disclosure against:

- (1) injury to patient,
- (2) physician-patient relationship, and
- (3) treatment services

- narrowly tailored court order

Good Cause

In re Marvin M.

Ordinary, run-of-the-mill objective data (not confidential communications)
disclosable if Government meets 'good cause' test established in §§ 290dd-2(b)(2)(C)

To establish “**good cause**”

- Other ways of obtaining information not available or would not be effective; and
- Public interest and need for disclosure outweigh potential injury to patient, physician-patient relationship and treatment services

See 42 CFR § 2.64(d)

Exercise: As Attorney for Respondent Mother

Judge admitted client's substance abuse attendance records and test results, but you want to keep out confidential communications between client and counselor. Client did not testify, communications concern triggers client's relapse history. What is basis of your objection?

1. Good Cause does not exist because other ways of obtaining the information exist and are equally effective
2. DCF may be able to establish good cause based on public interest in protecting children but they need something more
3. Good Cause does not apply because this is not "ordinary run-of-the-mill objective data" so statutory privilege protects information
4. None of the above

Confidential Communication vs Objective Data

Must distinguish between confidential communications and other information

Confidential communications disclosed only if “good cause” met AND one of three express circumstances is also established. Disclosure must be:

1. Necessary to protect against an existing threat to life or of serious bodily injury; OR
2. Necessary in connection with the investigation or prosecution of an extremely serious crime; OR
3. In connection with litigation or an administrative proceeding in which the patient offers testimony/evidence about content of the confidential communications

In re August 1993 Regular Grand Jury, 854 F.Supp. at 1384

State Confidentiality Statutes

Types of privilege

- Doctor/Patient
- Psychologist/Patient
- Marital Counselor/Client
- Battered Women's Shelter Counselor/Client

CGS § 52-146, *et seq.*



Exercise: Represent Respondent Mother

At trial, DCF offers into evidence a court-ordered psychological evaluation and records from client's psychiatrist and medical doctor, including treatment records and communications. To stop records coming into evidence, you:

1. **Object!** Psychologist/Patient, Psychiatrist/Patient, Doctor/Patient privilege all protect client's confidential information
2. **Object!** only to records from psychiatrist and medical doctor because psychological evaluation was court-ordered; client knew information would be shared with court
3. **Object!** only to records from psychiatrist because psychological evaluation was court-ordered and Doctor/Patient privilege does not apply in child protection proceedings
4. **None** of the above

State Confidentiality Statutes: **Mental Health Records**

- **Psychologist/Patient privilege**
52-146c: specifically applies in “civil action” and “juvenile action”
- **Psychiatrist/Patient privilege**
146e and f: not forum limited
- **Doctor/Patient privilege**
Applies in civil action

Is juvenile court a civil action? In re Samantha S, 2007 (re 52-146o)

Exercise: You're the Judge

At TPR trial, DCF asks you to admit psychiatrist's records. Mother's attorney objects. DCF argues that records are admissible because mother discussed her mental health during testimony. As an experienced jurist, you:

1. **Admit records** into evidence. You conducted a *Romance* hearing and determined that best interests exception to psychiatrist/patient privilege applies given relevance and probative value.
2. **Admit records**, DCF is correct. Party waives privilege when they testify about content the privilege was meant to protect.
3. **Admit the records**, mother waived privilege when she signed waiver pursuant to Specific Steps.
4. **None** of the above.

Mental Health Records: Issues to Consider

- What phase is proceeding in?
- Does Specific Steps form require releases?
- Has TPR been filed?
- Can DCF, other party, establish statutory exception to privilege?

See Falco v. Institute of Living, [254 Conn. 321 \(2000\)](#)

FY2018 Case Law and Policy Updates

- In re Lilyana et al. – 186 Conn. App. 96 (2018) – November
- In re Zakai F. – 185 Conn. App. 752 (2018) – November
- In re Madison M. – 185 Conn. App. 512 (2018) – October
- In re Joheli V. – 184 Conn. App. 259 (2018) – August
- In re Briana G. – 183 Conn. App. 724 (2018) – July
- In re Zoey H. – 183 Conn. App. 327 (2018) – July
- In re Katherine H. – 183 Conn. App. 320 (2018) – July

Detailed summaries: cca-ct.org/newsandevents/caselibrary/abuse-and-neglect/

FY2018 Case Law and Policy Updates

- **DCF Policy 34-2-7:** Revised policy for new definition of Educational Neglect (Aug 2018)
- **DCF Policy 31-8-17:** New policy to ensure DCF compliance with CGS §17a-101a requiring DCF to report to Chief State's Attorney's Office mandated reporters who fail to make timely referrals of suspected child abuse and neglect (Aug 2018)
- **DCF Policy 36-18:** New policy to ensure that DCF promotes trauma informed, family-centric approach to families impacted by intimate partner violence (IPV) that offers meaningful and sustainable assistance to families and is safe, respectful, culturally sensitive and responsive to unique strengths, concerns and needs of family (Oct 2018) <https://portal.ct.gov/DCF/Policy-Homepage/Bulletins/Policy-Bulletins-Index>

Questions?

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