

# Advocating for the Best Interest of the Child

A Guide for Foster Parents



## Acknowledgements

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Alliance for Children, Inc

ChildLaw Services, Inc

Foster Family-Based Treatment Association of WV

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<b>Overview of Legal System</b>	4
Preliminary Hearing	4
Adjudicatory Hearing	4
Review Hearing	5
Dispositional Hearing	5
Permanency Hearing(s)	6

<b>Role of the Guardian <i>Ad Litem</i></b>	7
Who is the guardian <i>ad litem</i> ?	7
What does the guardian <i>ad litem</i> do?	7
The Best Interest of the Child	7
Top 10 Ways Foster Parent Can Work with the Guardian <i>Ad Litem</i>	9
Contacts	10



## Overview of the Legal System

If abuse or neglect exists in a home, the State Department of Health and Human Resources (DHHR) will be responsible for removing the child from that particular environment. There are several people who will be involved in such a process including:

**Circuit Court Judge** - presides over court proceedings, and makes all final decisions

**Prosecuting Attorney** - represents the State/DHHR

**Defense Counsel** - represents the parent(s)

**Guardian ad litem** - represents the child

**DHHR (Department of Health and Human Resources) Worker** - this may include a case worker or social worker

Once the child is removed from the home, the following hearings will take place:

### **Preliminary Hearing**

The purpose of the preliminary hearing is to determine if the child is in “imminent danger”. The most common examples of imminent danger include child sexual abuse (of any child in the home), non-accidental trauma, abandonment of a child, or substantial emotional injury of a child.

### **Adjudicatory Hearing**

The purpose of the adjudicatory hearing is to determine if the parent(s) abused or neglected the child. If the determination is made that the parents HAVE abused or neglected the child,

The children and youth we care for deserve the best legal representation possible and we have to ensure as much as possible that happens.

- Richard Burch,  
Foster/Adoptive Parent

they will get an improvement period. The exceptions to this include: if a parent sexually molested a child in the home, if a parent caused death to a child or another parent in the home, if the parent has abandoned the child.

If the determination is made that the parent has NOT abused or neglected the child, then the child will be returned to their custody and the case will be dismissed from court.

### **Review Hearing(s)**

The purpose of the review hearing is to keep the judge informed regarding the parent(s) improvement period. The judge will want to know if the parent(s) are following the improvement plan and how the child is responding in the current placement. Review hearings must take place a minimum of every 90 days.

### **Dispositional Hearing**

The purpose of the dispositional hearing is to determine the outcome based on findings of fact and conclusions of law with the court giving precedence to dispositions in the following order:

1. Dismiss the petition
2. Dismiss petition and refer family to community for assistance
3. Return the child to the home under supervision of the Department
4. Order terms of supervision
5. Commit to temporary custody of the Department or suitable guardian
6. Terminate parental rights



Some examples of conditions that could lead to termination of parental rights could result from:

- Failure to follow the requirements during the improvement period
- Addiction to drugs and refusal to take appropriate steps to address the addiction
- Parent having sexually abused the child or another child in the home
- Parent having abandoned the child

### **Permanency Hearing(s)**

The purpose of the permanency hearing(s) is to keep the judge informed regarding the progress of reaching permanency for the child. Permanency hearings are required to take place every 90 days until permanency is achieved. Examples of permanency include:

- Adoption
- Legal Guardianship
- Independent Living



## Role of the Guardian *Ad Litem*

### **Who is the guardian *ad litem*?**

The guardian *ad litem* is a person appointed to represent the interest of the child. This person will be:

- An attorney
- Someone who has completed a minimum of 3 hours of continuing legal education on representing children in abuse and neglect cases
- An advocate for the child inside and outside the courtroom

### **What does a guardian *ad litem* do?**

The first step of a guardian *ad litem* is to review all relevant information regarding the child and the case; this may involve contacting the DHHR caseworker to review any information they may be able to provide. Next, the guardian *ad litem* will want to meet with the child and talk to them about the roles that each of them will play during the process. This may be the first experience this child has had with the legal system, so explaining the process at an age-appropriate level is the key to receiving cooperation from the child. Communicating with teachers, social workers, providers, and foster parents about the child will be critical when determining the facts surrounding the situation. The guardian *ad litem* will attend all hearings on behalf of the child, as well as attend all meetings involving treatment both inside and outside the classroom.

### **The Best Interest of the Child**

The guiding principle for the guardian *ad litem* is the best interest of the child. The “best interests of the child,” generally refers to the deliberation that courts undertake when deciding what types of services or actions will best meet the child’s needs, as well as who is best suited to take care of a child.



Foster Parents are an invaluable resource and source of information to assist me in representing children.

- Julie Lynch, Esq



“Best interests” are typically determined by considering a number of factors related to the circumstances of the child, as well as the circumstances of the child’s potential caregiver(s). Throughout all decisions, the child’s ultimate safety and well-being is the main concern.

When determining the best interest of the child, the guardian *ad litem* should:

- Talk to the child and find out what he/she wants.
- Talk to teachers, social workers, foster parents, relatives and service providers to find out what they think would be best for the child.
- Seek guidance from the law if there are legal questions that need answered.

When determining the best interest of the child, the guardian *ad litem* may need to make the following decisions:

- Should the parental or custodial rights be terminated?
- Should visitation with the parent be supervised or unsupervised? Should there be any contact with the parent at all?
- What is the most appropriate placement for the child?
- If siblings are separated, what type of sibling visitation should be arranged for the child?
- Is the child ready to transition back into the parent’s home?







# Top 10 Ways

## Foster Parents Can Work with the Guardian *Ad Litem*

1. **Listen to and support your foster/adoptive child.** Foster parents are advocates for the child in their care. Listening to the child's concerns without judgment can make a real difference during this chaotic time in his/her life.
2. **Keep the guardian ad litem in the loop.** A guardian *ad litem* is a valuable resource to help you to advocate for the child in your care. The DHHR worker should NOT be the only contact person regarding the child. Foster parents are able to keep open lines of communication with the guardian *ad litem* when ever needed.
3. **Attend significant hearings.** Foster parents can and should request notification of important court hearings and attend with the child, when appropriate. Remember, the guardian *ad litem* can be contacted if there is a question regarding whether the hearing is appropriate for the child to attend.
4. **Attend MDT (Multi-disciplinary team) meetings.** Foster parents should let the DHHR worker know they are interested in attending MDT's and request advanced notice of meetings. If the foster parents are not notified and invited to attend MDT's, they should inform the child's guardian *ad litem*.
5. **Ask questions.** Foster parents have the right to check on the status of the court case involving the child in their care and make themselves aware of any important meetings or hearings. By being involved, foster parents can help the child to understand all aspects of their permanency plan.
6. **Invite the guardian ad litem to visit the child in the home.** Guardian *ad litem*s are willing to travel to your home to visit with the child in your care. This is a wonderful opportunity to meet in the comfort of your own home.
7. **Communicate regularly with the guardian ad litem.** Foster parents have the opportunity to share important information about the child's progress as well as any concerns that may exist regarding the child.
8. **Become aware of the guardian ad litem immediately.** When a child is placed in the home, the foster parents should ask the DHHR worker for the name and phone number of the child's guardian *ad litem*. If the DHHR worker does not know, the foster parents can call the Prosecuting Attorney's office for the county the child is from and ask them.
9. **Be positive, helpful and persistent.** If the guardian *ad litem* does not reach out to the foster parents – they should be persistent! Keeping a positive attitude and working together will be the best way to help the child.
10. **Remember that you are a very critical part of ensuring that the child/children placed in your care are safe and secure.** Do not allow the professionals, including the guardian *ad litem* involved in the child/children court case, to discourage you from participating in the process.

If the foster parent:

- has difficulty establishing an effective relationship with the guardian *ad litem* after persistent and positive attempts,
- is concerned that significant information they may have about the child/children aren't being heard,
- feel the child/children are not being heard or properly being represented,

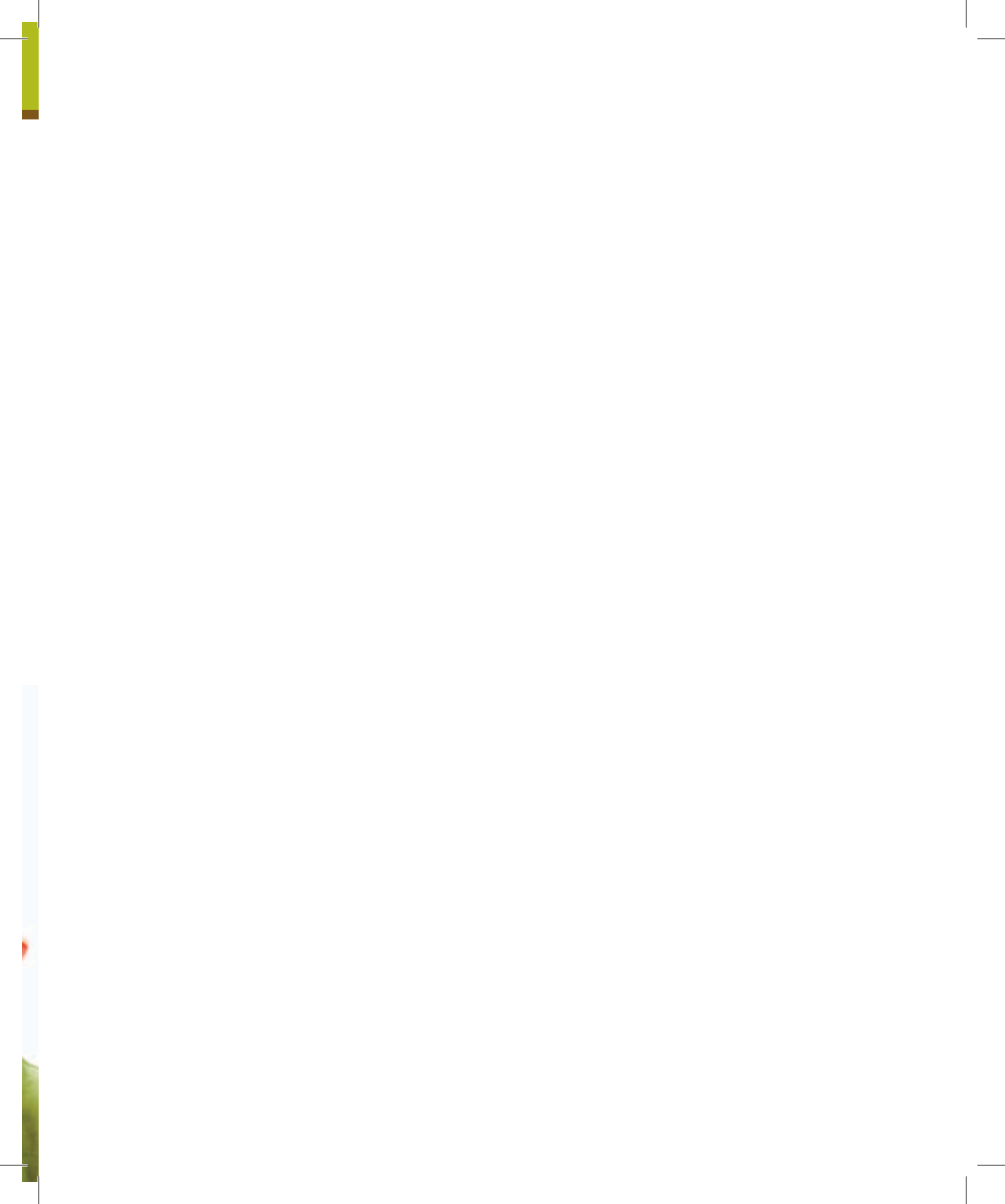
they should contact the office of the Judge assigned to the matter.

**Other numbers foster parents can contact for assistance:**

(304) 558-2000	Governor's office
(304) 558-2456	WV Bar Association
(304) 558-0145	Supreme Court of Appeals

Remember effective “fostering” requires caring and loving parents who can be good advocates and positive influences in the lives of the children entrusted into your care.





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