



Conceptualizing effective legal representation for Foster youth: A group concept mapping study

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ARTICLE INFO

Keywords:

Group concept mapping
Legal representation
Foster youth
Foster Care
Foster Care alumni

ABSTRACT

Whilst there is broad consensus that foster youth embroiled in dependency court proceedings related to child maltreatment are entitled to *effective* representation, few studies have examined this phenomenon. This study used Group Concept Mapping (GCM) with a sample of 31 foster youth and alumni to explicate a conceptual framework for effective legal representation. GCM is an integrated, mixed-method research approach that utilizes non-metric multidimensional scaling and hierarchical cluster analyses to analyze qualitative data. As a result, pictorial illustration of the data are generated. Results indicate that youth conceptualized effective legal representation via six unique clusters: *Legal Skills*, *Foster Care Knowledge*, *Youth/Attorney Relationship*, *Attitude About Foster Care*, *Contact*, and *Communication*. Additionally, participants viewed the *Communication* cluster as most important and feasible, when compared to other clusters in the final solution. Conversely, statements in the *Legal Skills* cluster were rated the least important and the *Foster Care Knowledge* was rated least feasible. Data indicates the need for a more wholistic approach to viewing effective legal representation. Findings suggest explicit attention to training about legal approaches and youth/alumni engagement. As well, data provide foundational aspects on which to build future research in this area.

1. Introduction

The Child Abuse Prevention and Treatment Act (CAPTA) of 1976 requires every state to appoint a guardian ad litem (GAL) to represent the child's best interests in child abuse or neglect cases resulting in dependency proceedings (Child Welfare Information Gateway, 2014). Over the last several years, data from the U.S. Department of Health and Human Services reports on the number of court appointed representation for only 25 states, indicating that 25% of child victims received legal representation (DHHS, 2017). The GAL can be an attorney, court appointed special advocate (CASA, 2018), or both (Litzelfelner, 2000). CAPTA provides a limited description of the roles and responsibilities of a GAL which include having a direct understanding of the child's situation and needs in order to make best interest recommendations. Further, Kaur (2013) describes that those GALs who are attorneys have a professional obligation to not only represent the child's best interests, but to also have a client-directed approach, representing the child's expressed interests.

Regardless of how states manage GAL roles, there is widespread agreement that foster youth involved in dependency court proceedings

have a right to effective legal counsel (Miller, Duron, Washington, & Donohue, 2017; Bohr, 2006; Taylor, 2009; Katner, McCarthy, Rollin & Ventrell, 2001; American Bar Association [ABA], 2011; U.S. Department of Health and Human Services [DHHS], 2017; Harfeld, Riehl, & Weichel, 2009). While some research has examined GAL processes and outcomes (Litzelfelner, 2000; Stotzel & Fegert, 2006), little research has included foster youth perceptions of their experiences to better understand the attorney-child relationship in exploring the effectiveness of legal representation.

The purpose of this study is to examine foster youth's and alumni's perceptions of their experiences with GALs who are attorneys in order to identify the essential characteristics of effective legal representation. This study used Group Concept Mapping (GCM) with a sample of foster youth and alumni ($N = 31$) to explicate a conceptual framework for effective legal representation for youth in dependency proceedings. GCM is a participatory, integrated mixed-method research approach that utilizes non-metric multidimensional scaling and hierarchical cluster analyses to analyze qualitative data (Kane & Rosas, 2018). As a result, pictorial illustration of the data are generated. After reviewing relevant literature, this paper presents findings and pertinent

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implications for the legal representation of foster youth.

2. Background

2.1. State designation of guardians ad litem

Extending beyond CAPTA's federal mandate requiring a GAL in dependency cases, each state formulates their own policies governing who is designated as a GAL. Although appointed GALs were initially all attorneys, states have the freedom of designating non-attorneys (Lorentz, 2011). The majority of states continue to assign attorney-GALs in dependency proceedings with statutes in at least 35 states requiring the assignment of an attorney (Frederick & Sams, 2007). The primary GAL models include variations of attorney representation alone, trained CASA volunteer representation alone, or representation from both an attorney and CASA volunteer (Bilson & White, 2005; Litzelfelner, 2000). While several models for practice exist, the American Bar Association has supported reform efforts to improve the outcomes of abused and neglected children by requiring appointment of an attorney at dependency court (ABA, 2005).

Laws do not currently define an attorney's role in representing children, training requirements, or caseload limits (Taylor, 2009). Beyond training as an attorney, many states require no further education for attorney-GALs (Child Welfare Information Gateway, 2014). There is also state variation in role expectations for GALs in that some GALs represent the best interests of the child, the child's desires, or best interests and expressed interests (Duquette & Darwall, 2012). Approximately half of the states require the GAL to present to the court the child's wishes and the GAL's recommendations (Child Welfare Information Gateway, 2014). In addition to minimally expecting GALs to advocate for the child's best interests, states have outlined specific GAL duties that include conducting consistent in-person meetings and personal analysis of the case evidence, attending all proceeding-related meetings, overseeing the receipt of court ordered services, and providing on-going report submissions (Child Welfare Information Gateway, 2014).

2.2. Importance of legal representation

When a child enters dependency proceedings, the legal representation provided is part of an overarching goal of ensuring safety, well-being, and permanency. In fact, the 1967 Supreme Court ruling in *Gault* ascertained that a minor's right to counsel is a matter of due process (Lorentz, 2011; *In re Gault*, 387 U.S. 1, 36, 1967). The United Nations treaty, the Convention on the Rights of the Child (CRC, 1989), states that children have the right to have their views expressed and should be provided an opportunity to be heard in judicial proceedings affecting them. Taylor (2009) posits that when children have attorney representation, the attorney advocates for the child's expressed interests, and lowers the risk of a child being placed in foster care when it can be avoided, or leaving the child in the child welfare system longer than necessary.

Attorney representation is also essential in instances where a child must be removed from their home or when parental rights must be terminated (Taylor, 2009). In one study, youth who were represented by attorneys were 1.5 times more likely to achieve permanency than youth not represented by an attorney, and transitioned to permanency twice as quickly (Zinn & Slowriver, 2008). In addressing children's need for legal representation, some models have combined the best interest of the child with the child's right to express preferences and feelings (Bilson & White, 2005). While some advocate in favor of client-directed representation (ABA, 2011), others question children's rights to counsel (Guggenheim, 2006; see also Kaur, 2013). Regardless of the position taken on which interests should be represented, attorneys have an important role to fulfill in dependency proceedings. This role includes listening to clients, researching the law, and evaluating and presenting

legal options (Glynn, 2007). The attorney-child relationship can be further evaluated to consider the extent of communication and involvement of the child in legal practices. An assessment of this interaction may reveal the child's perceptions of quality and assessment of being represented.

2.3. Youth involvement in dependency proceedings

A child's participation in dependency court may indicate the effectiveness of the attorney, with an attorney who is committed to the child ensuring that the child's voice is heard (Križ & Roundtree, 2017). Research on children's participation in the legal process supports children's active engagement, demonstrating the importance of providing children with information, preparing them for court, and debriefing following a court appearance. While children in a study of dependency cases in Los Angeles were more knowledgeable about the legal process and less distressed about attending dependency hearings, most children lacked a full or accurate understanding of what happened during the hearing (Quas, Wallin, Horwitz, Davis, & Lyon, 2009). Weisz et al. (2011) found that children in the Midwest who attended their hearings reported more positive feelings about the dependency process, including feeling like the judge made a fair decision and they could talk to the GAL about their views. Yet, inconsistencies remain around how children are involved in the judicial process.

In a study of Washington State's pilot project to notify adolescents of dependency hearings, of their right to be present, and have their voices heard, researchers found that half of the youths involved in more than 200 court hearings over the course of the study were present and most thought the hearings were fair (Bridge, 2010). However, only about 25% of these youths felt prepared for court (Bridge, 2010). Young adults reflecting on their participation in decisions made about their care while clients in a northeastern state have described two primary rationales for youth engagement in the process: 1) an ability to arrive at and share an opinion and 2) more positive outcomes such as learning how child protective services works and developing a capacity to make decisions (Križ & Roundtree, 2017). The research conducted thus far on child involvement in legal affairs highlights youths' experiences of the dependency process, yet it does not delineate standards for effective legal representation.

2.4. Conceptualizing effective legal representation

The ABA has proffered standards of practice for lawyers representing children in child abuse and neglect cases with consideration given to designation as a GAL. These standards recommend roles and responsibilities that include developmentally appropriate communication, counseling the child, eliciting child preferences, and including the child at hearings (ABA, 1996). In considering reform needs for the legal representation of minors, Lorentz (2011) outlines several reasons why it is difficult for attorneys to achieve ABA suggested standards of practice. These reasons include exposure to few family law or child development courses, lack of training with minors, and a lack of resources (Lorentz, 2011). In a needs assessment of a national child representation project, Duquette and Darwall (2012) gathered feedback from many sources inclusive of judges, attorneys, and children. These key stakeholders described an ideal legal practice as one requiring an attorney to develop a bond with youth, conduct a thorough investigation, negotiate solutions, pursue a holistic view of children's needs, and participate in comprehensive training (Duquette & Darwall, 2012). Notwithstanding these ideas about legal representation practices, a dearth exists in the research that establishes what effective legal representation is from the perceptions of the youth who are the subject of these cases.

In a 2017 study, the authors explored foster youth and alumni perceptions of the legal care received in their dependency proceedings. The findings from this study indicate that youths' experiences of legal representation closely mirror their perceptions of their entire foster care

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