

**November, 2011**

**Case and Legislative Update**  
*for*  
**Abuse, Neglect, Dependency, and Termination of  
Parental Rights Proceedings in North Carolina (2011)**

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Production of this update made possible with funding provided by the U.S. Department of Health and Human Services—Administration for Children and Families, and the Court Improvement Program of the N.C. Administrative Office of the Courts.

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**Case and Legislative Update**  
*for*  
**Abuse, Neglect, Dependency, and Termination of  
Parental Rights Proceedings in North Carolina**

**November, 2011\***

This update addresses cases and legislation that affect the manual *Abuse, Neglect, Dependency, and Termination of Parental Rights Proceedings in North Carolina*, published by the UNC School of Government in February, 2011. The update addresses cases through October, 2011, that have a substantive impact on the contents of the manual. New cases relevant to topics addressed in the manual that do not have a substantive impact on the material are not addressed in this update but may be included in a future edition of the manual. The hardcopy of the manual has a tab for supplements where this and future updates may be added. Each subtopic in this update refers readers to specific sections in the manual, so that they may see exactly where in the manual any given discussion is relevant. Comments, questions, or suggestions regarding this update or the manual should be directed to Janet Mason, 919-966-4246, [mason@sog.unc.edu](mailto:mason@sog.unc.edu).

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\* By Kella Hatcher, Janet Mason, and John Rubin. The update addresses cases decided through the end of October, 2011. The legislation addressed in this update is from S.L. 2011-295 and S.L. 2011-332 (section 4.1 and 4.2), both effective and applicable to actions filed or pending on or after October 1, 2011; S.L. 2011-326 (section 12(a) and (b)), effective June 27, 2011; S.L. 2011-145 (section 15.20), effective June 15, 2011; and S.L. 2011-283 (section 1.3), effective for actions commenced on or after October 1, 2011.

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**I. Attorney and Guardian ad Litem Representation**

**A. Parent's Representation by Counsel**

1. ***Ineffective assistance of counsel.*** *In re S.N.W.*, \_\_\_ N.C. App. \_\_\_, 698 S.E.2d 76 (June 15, 2010), addresses circumstances in which a parent is not present in court for a hearing. The respondent father appealed from an order terminating his parental rights, claiming that he was denied effective assistance of counsel when his attorney was permitted to not participate in the hearing. On the date of the hearing, the father was not present and there was a brief exchange between the judge and the father's attorney about the father not "keeping up with" the attorney. The judge then stated that although he would not permit the attorney to withdraw from the case, he would allow the attorney to not participate. The TPR proceeding took place and the court terminated the father's rights. The court of appeals remanded the case, stating that it could not determine whether the respondent received effective assistance of counsel, and that the trial court should have made further inquiries about the attorney's efforts "(1) to contact Respondent; (2) to protect Respondent's rights; and (3) to ably represent Respondent." The record did not show what steps the attorney took to contact the client after counsel stated that his attempt to return a phone call from respondent was unsuccessful. The court noted that evidence in the record indicated that DSS had been able to communicate and meet with the respondent after the TPR petition was filed, and that counsel's fee application included only .55 hours for time spent out of court on the case, which the court said, "does not reflect an adequate amount of time given the lengthy history of this case."

Relevant manual sections:

§ 2.5.D.1 (page 43)

§ 9.4.A.6 (page 241)

2. ***Waiver of counsel.*** [Note: The case discussed here is pending in the North Carolina Supreme Court, which granted discretionary review on August 25, 2011.] The court of appeals, reversing a termination order in *In re P.D.R.*, \_\_\_ N.C. App. \_\_\_, 713 S.E.2d 60

(June 7, 2011), held that the same rules that apply to waiver of counsel in a criminal case—those set out in G.S. 15A-1242—apply in a TPR proceeding. The trial court must determine that the waiver is knowing, intelligent, and voluntary before allowing a respondent to proceed pro se. After thorough inquiry the court must determine whether respondent:

- has been clearly advised of the right to counsel;
- understands and appreciates the consequences of a decision to waive counsel; and
- comprehends the nature of the petition, the proceedings, and the meaning of termination of her rights.

After determining that a respondent knowingly and voluntarily waives counsel (under the above criteria), the court's options are to:

- allow respondent to proceed pro se because she has the mental fitness to represent herself; or
- deny her request to proceed pro se because she does not have the basic competence required to present a defense without the assistance of counsel.

The court's determinations must be supported by findings of fact.

Relevant manual sections:

§ 2.5.D.2 (page 43)

§ 9.4.A.4 (page 241)

- 3. *Provisional counsel.*** New legislation amends G.S. 7B-602(a) and 7B-1110.1(a) to specify that the appointment of provisional counsel shall be pursuant to rules adopted by the Office of Indigent Defense Services. [Sections 12(a) and 12(b) of S.L. 2011-326]

Relevant manual sections:

§ 2.5.D (page 43)

§ 5.4.B (page 132)

§ 9.4.A (page 239–40)

- 4. *Expert witness compensation.*** G.S. 7A-498.5(f) has been amended to require the Office of Indigent Defense Services, in setting compensation rates for expert witnesses, not to exceed the rate set by the AOC under G.S. 7A-314(d). [Section 15.20 of S.L.2011-145] IDS policies and compensation rates for expert fees and expenses are explained in an October, 2011, memorandum issued by the Office of Indigent Defense Services, available on the IDS website at:

<http://www.ncids.org/Rules%20&%20Procedures/Fee%20and%20Expense%20Policies/ExpertNon-CapPolicy.pdf>.

Relevant manual section:

§ 2.5.E (page 44)

## B. Guardian ad Litem for Parent

**Note:** New cases expand on earlier cases' analyses of statutes related to GAL appointments for parents. Because the statutory language related to GAL appointments for parents is effectively the same for abuse, neglect, and dependency proceedings as for TPR proceedings, appellate cases look to both types of cases.

1. **GAL for parent who is incompetent or has diminished capacity.** In *In re A.R.D.*, \_\_\_ N.C. App. \_\_\_, 694 S.E.2d 508 (June 15, 2010), *aff'd per curiam*, 364 N.C. 596 (Dec. 20, 2010), the court found no abuse of discretion for failing to conduct a hearing on competency and not appointing a GAL for the parent in a TPR case. As in earlier cases, the court of appeals looked to the definition of "incompetent adult" in G.S. 35A-1101(7):

An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

While the TPR petition had referenced the mother's depression, uncontrollable temper, and emotional imbalance, the appellate court found that the evidence did not amount to a diagnosis of a mental health issue or indicate that the mother was unable to handle her own affairs, thereby distinguishing the case from two earlier cases reaching a different conclusion. *See In re M.H.B.*, 192 N.C. App. 258 (2008) (involving respondent who said he had been diagnosed with post traumatic stress disorder, manic depression, and bipolar disorder, and that he did not know why he was at the hearing), and *In re N.A.L.*, 193 N.C. App. 114 (2008) (involving a mother who had an IQ of 74 and was diagnosed with "Personality Disorder NOS" and "Borderline Intellectual Functioning").

In *In re S.R.*, \_\_\_ N.C. App. \_\_\_, 698 S.E.2d 535 (Sept. 7, 2010), no abuse of discretion was found for failing to appoint a GAL for the mother where there were no allegations or evidence that the mother's substance abuse, mental health, and anger issues affected her competence. In addition, the dependency ground was not alleged and respondent's actions indicated that she was aware of her problems and what she needed to do.

Relevant manual sections:

§ 5.4.B.3.b (page 133)

§ 9.4.B.1.b (page 242)

2. **Role of GAL for parent.** Some case law related to the role of the GAL for a parent in a juvenile case has only limited relevance because of a series of statutory changes. Before October, 2005, for example, the statute providing for a GAL for an incompetent parent in a TPR case did not reference Rule 17. Recently the court of appeals, in *In re A.S.Y.*, \_\_\_ N.C. App. \_\_\_, 703 S.E.2d 797 (Dec. 21, 2010), stated that the 2005 addition of a reference to Rule 17 should change the way the statute is interpreted. The court reversed

a TPR order because the trial court allowed the parent's GAL to withdraw when the parent did not appear for the TPR hearing. In *A.S.Y.* the court provided the following guidance on the role of a parent's GAL:

When a GAL is appointed in accordance with Rule 17 for a parent in an abuse, neglect, or dependency proceeding, or a termination of parental rights proceeding, it is the duty of the GAL to act 'as a guardian of procedural due process for that parent, to assist in explaining and executing her rights.' [citing *In re Shepard*, 162 N.C. App. 215 at 22 (2004)] In addition, the GAL appointed pursuant to Rule 17 'has a duty to represent the party he is appointed to represent to the fullest extent feasible and to do all things necessary to secure a judgment favorable to such party.' [citing Alan D. Woodlief, Jr., *Shuford North Carolina Civil Practice and Procedure* § 17:20 (6th ed. 2003)] Finally, once a parent has been appointed a GAL according to Rule 17, the presence and participation of the GAL is necessary in order for the trial court to 'proceed to final judgment, order or decree against any party so represented. . . .' N.C. Gen. Stat. § 1A-1, Rule 17(e).

*A.S.Y.*, 703 S.E.2d at 803.

Relevant manual sections:

§ 5.4.B.3(e) (page 134)

§ 9.4.B.2(c) (page 243)

### **C. Guardian ad Litem Representation of Children**

The North Carolina Supreme Court, in *In re J.H.K.*, 365 N.C. 171 (June 16, 2011), addressed issues related to GAL representation of children and reversed the *J.H.K.* court of appeals case currently cited in the manual (on page 35). The court of appeals had held that the trial court erred in conducting a TPR hearing when the child's GAL volunteer was not present. The North Carolina Supreme Court reversed, holding that although the TPR hearing was a "critical stage," in this case the presence of the GAL attorney was sufficient, because a local GAL program represents a juvenile within the meaning of G.S. 7B-601 and 7B-1108 by performing the duties listed in G.S. 7B-601. There was no showing that the juvenile was not adequately represented by the program or that the physical presence of the non-lawyer GAL volunteer was necessary.

This case is the first to address the concept of GAL team representation, a topic discussed in the manual on page 34. In its opinion, the North Carolina Supreme Court uses the word "team" more than once in characterizing GAL representation. Examining the statutes pertaining to GAL representation, the court stated,

When read in *pari materia*, these statutes manifest the legislative intent that representation of a minor child in proceedings under sections 7B-601 and 7B-1108 is to be, as DSS argues, by the GAL program established in Article 12 of the Juvenile Code. Under Article 12 volunteer GALs, the program attorney, the program coordinator, and clerical staff constitute the GAL program.

*J.H.K.*, 365 N.C. at 175.

Subsequently, the court of appeals relied on the *J.H.K.* Supreme Court decision in holding that GAL representation was adequate where an attorney advocate but not the appointed GAL was present at the adjudication and disposition hearings in an abuse and neglect proceeding. *In re A.N.L.*, \_\_\_ N.C. App. \_\_\_, 714 S.E.2d 189 (July 5, 2011). In the same case, the court of appeals confirmed the appropriateness of a GAL staff member being appointed as GAL for the child.

Relevant manual sections:

§ 2.3.C (page 34)

§ 2.3.D.1 (page 35)

§ 2.3.D.4 (page 36)

§ 9.4.C (page 244)

## **II. Jurisdiction**

### **A. UCCJEA Jurisdiction to Modify Other State’s Custody Order**

In *In re K.U.-S.G.*, \_\_\_ N.C. App. \_\_\_, 702 S.E.2d 103 (Nov. 16, 2010), the record reflected that the judge in North Carolina, before proceeding in a termination of parental rights action, had contacted the court in Pennsylvania and determined that it did not wish to retain jurisdiction. The TPR order was vacated, however, because no order from the Pennsylvania court was filed in the North Carolina action reflecting that the Pennsylvania court either determined that it no longer had exclusive continuing jurisdiction or intended to relinquish jurisdiction to North Carolina as a more convenient forum.

Relevant manual section:

§ 3.3.C.2 (pages 70–71)

### **B. Ending Jurisdiction**

The court of appeals, in *Rodriguez v Rodriguez*, \_\_\_ N.C. App. \_\_\_, 710 S.E.2d 235 (April 19, 2011), addressed the issue of whether certain circumstances render juvenile court jurisdiction terminated even where there is no order explicitly terminating jurisdiction. Here, the court found that because the last order in the juvenile case placed the children in the physical and legal custody of the mother, ended the involvement of DSS and the GAL program, and included no provisions requiring ongoing supervision or court involvement, juvenile court jurisdiction was terminated as contemplated by G.S. 7B-201(a).

Relevant manual section:

§ 3.1.C (page 62)

### III. Civil Procedure

#### A. Rule 5 Service Requirements

New legislation changes the method of accomplishing service under Rule 5(b) of the Rules of Civil Procedure. Previously the rule permitted service on either the party or the party's attorney of record. Now Rule 5 requires that service be made on the party's attorney of record if there is one. Service on the party is required only if ordered by the court or if the party has no attorney of record. [Section 4.2 of S.L. 2011-332]

Relevant manual sections:

§ 4.4.C (pages 99–100)

§ 9.7.C (pages 252–53)

#### B. Rule 60(b) Motions in Juvenile Cases

In *In re L.H.*, \_\_\_ N.C. App. \_\_\_, 708 S.E.2d 191 (March 15, 2011), the court of appeals addressed a Rule 60(b) motion for relief from a TPR order, filed while an appeal from the TPR order was pending. The father's motion alleged newly discovered evidence relating to abusive conditions in and the child's removal from the home of the grandmother, who was the intended adoptive parent at the time of the TPR hearing. The trial court indicated that the motion would be dismissed because the trial court would enter the same disposition even if the additional evidence had been before the court. The court of appeals reversed and remanded in part, explaining the procedures set out in *Bell v. Martin*, 43 N.C. App 134 (1979), *rev'd on other grounds*, 299 N.C. 715 (1980). When a Rule 60(b) motion is made while an appeal is pending, the trial court may conduct a hearing on the motion and indicate how it would rule if an appeal were not pending. The appellate court can be asked, as it was in this case, to delay consideration of the appeal until the trial court has considered the Rule 60(b) motion. The trial court in this case combined a hearing on the Rule 60 motion with a review hearing, and erred in not considering specific allegations in the Rule 60 motion or whether they would have affected the initial decision. Also, combining the Rule 60 motion with the disposition was problematic because appropriate notice requirements for a disposition hearing were not met, and the court had no jurisdiction to conduct a disposition hearing unless the prior order was set aside.

Relevant manual section:

§ 4.9.D.2 (page 111)

### IV. Abuse, Neglect, and Dependency Hearings and Orders

#### A. Reasonable Efforts Findings

1. **Removal from both parents separately.** In *In re D.M.*, \_\_\_ N.C. App. \_\_\_, 712 S.E.2d 355 (April 19, 2011), the court of appeals discussed reasonable efforts requirements when

the child was initially removed from her mother, later placed by DSS with her father, and subsequently removed from her father. While reasonable efforts findings were made with respect to the mother, the court of appeals noted that both DSS and the trial court failed to consider that reasonable efforts must be addressed with respect to both parents where, as here, DSS had removed the child from both parents separately.

Relevant manual section:  
§ 2.6.E.4 (page 53)

- 2. *Ultimate finding for ceasing reunification efforts.*** In *In re I.R.C.*, \_\_\_ N.C. App. \_\_\_, 714 S.E.2d 495 (August 2, 2011), the court of appeals expanded on previous discussions of the findings required for ceasing reunification efforts. The court stated that the requirements of G.S. 7B-507(b) may be satisfied where the trial court relates its findings to an ultimate finding or conclusion that specifically sets forth the basis for ceasing reunification efforts. In most cases that ultimate finding (or conclusion) is that “reunification efforts would be futile or inconsistent with the juvenile’s health, safety, and need for a safe, permanent home.” Here, the trial court did not relate its findings to that or any other ultimate finding of a basis for ceasing reunification efforts, and the court of appeals refused to “simply infer from the findings that reunification efforts would be futile or inconsistent with the juvenile’s health, safety, and need for a safe, permanent home.”

Relevant manual section:  
§ 2.6.E.6(a) (page 55)

## **B. Consent Orders**

New legislation addresses consent orders, changing the location of this subject within the Juvenile Code, clarifying the statute’s applicability to different types of orders, and broadening the circumstances under which a consent order is permissible. In particular, the new provision permits consent orders when all parties are either present or represented by counsel who is present and authorized to consent. This change renders some of the case law cited in the manual inapplicable to cases for which the new law applies. The previous Code provision addressing consent orders, G.S. 7B-902 (now repealed), was located in the part of the Code related to dispositions and did not specify the types of orders for which its requirements were applicable. The subject of consent orders now is addressed in G.S. 7B-801(b1), which states that the court may enter a consent adjudication, disposition, review, or permanency planning order in an abuse, neglect, or dependency proceeding when

- all parties are present or represented by counsel who is present and authorized to consent;
- the juvenile is represented by counsel; and
- the court makes sufficient findings of fact.

[Section 5 of S.L. 2011-295]

Relevant manual sections:

§ 6.1 (page 158)

§ 6.2.C (page 160)

§ 6.5 (page 175)

§ 8.5.D (page 229)

Hearing Checklists for Adjudication, Disposition, Review, and Permanency Planning

### **C. Adjudication Evidence**

New legislation addresses evidence in the form of stipulations in abuse, neglect, and dependency cases, a subject previously not addressed in the Juvenile Code. G.S. 7B-807(a) now makes clear that stipulations by a party may constitute evidence at adjudication. It also requires that a record of specific stipulated adjudicatory facts be made by either:

- submitting to the court written stipulated facts, signed by each party stipulating to them; or
- reading the stipulated facts into the record, followed by an oral statement of agreement by each party stipulating to them.

[Section 6 of S.L. 2011-295]

Relevant manual sections:

Stipulation requirements are relevant to the general topic of adjudication procedures and evidence (§§ 6.2, 6.3, pages 158–63), but the manual does not address stipulations directly except with respect to their admissibility in later proceedings (§ 11.7.D.3, pages 342–43).

### **D. Adjudication of Neglect**

In *In re H.N.D.*, the North Carolina Supreme Court reversed the decision of the court of appeals addressing required findings for an adjudication of neglect. The court of appeals had held that because the trial court did not make findings that the child's circumstances created a substantial risk of impairment, the adjudication of neglect should be reversed. The court of appeals stated that while there are cases in which the evidence is so substantial that such findings are not necessary, where, as here, evidence is capable of more than one inference, the trial court must make a finding regarding the substantial risk of impairment. The Supreme Court reversed by adopting the dissenting opinion in the court of appeals, which pointed out that the majority had relied on a case in which there actually was no such finding regarding a substantial risk of impairment, and that in this case the evidence supported the findings and the findings supported the adjudication. *In re H.N.D.*, 364 N.C. 597, *rev'g per curiam for reasons stated in the dissenting opinion*, \_\_\_ N.C. App. \_\_\_, 696 S.E.2d 783 (July 20, 2010).

Relevant manual section:

§ 6.3.E.2 (page 167)

## E. Dispositional Hearings, Findings, and Orders

**1. *Inquiry about missing parents, paternity, relatives.*** New legislation adds to G.S. 7B-901 a requirement that the court, at the initial disposition hearing, inquire about any missing parent, paternity issues, and relatives. The new provision is nearly identical to language that already appears in G.S. 7B-506(h)(1) related to nonsecure custody hearings. At disposition, the court is now required to:

- inquire about the identity and location of any missing parent and whether paternity is at issue;
- make findings about efforts to locate and serve a missing parent and to establish paternity if paternity is in issue; and
- inquire about efforts made to identify and notify relatives as potential resources for placement or support.

Also, the court may provide in its order for specific efforts aimed at locating, serving, or establishing the paternity of a parent. [Section 7 of S.L. 2011-295]

Relevant manual sections:

§ 2.1.B.8 (page 25)

§ 5.4.B.6 (pages 135–36)

§ 8.2 (pages 211–12)

§ 8.5.B (pages 226–28)

Hearing Checklist for Disposition

**2. *Required permanency planning findings involving two parental homes.*** Under G.S. 7B-907(b), at a permanency planning hearing if the child “is not returned home,” the court must consider specific relevant criteria. In *In re J.M.D.*, \_\_\_ N.C. App. \_\_\_, 708 S.E.2d 167 (March 15, 2011), the court of appeals analyzed the applicability of that requirement to a situation in which a child is removed from one parent’s home and placed in the home of the other parent. The court of appeals interpreted the term “home” as used throughout G.S. 7B-907(b) to mean the home from which the child was removed, so that if a child is removed from one parent’s home and placed in the home of the other parent, the court must make findings about the factors listed in G.S. 7B-907(b) that are relevant.

Relevant manual section:

§ 8.4.D.1 (page 219)

**3. *Findings related to permanent plan.*** In *In re P.O.*, \_\_\_ N.C. App. \_\_\_, 698 S.E.2d 525 (Sept. 7, 2010), the court of appeals addressed whether the trial court satisfied the requirement of G.S. 7B-907 to make specific findings in a permanency planning order regarding a permanent home for the child. The trial court had ordered that legal guardianship be placed with relatives, and even though the court did not explicitly use the term “permanent” in its order or refer to G.S. 7B-600 related to guardianship, the court of appeals found it was reasonable to infer from the findings and other provisions of the order that the court intended to establish guardianship as a permanent plan.

Relevant manual section:  
§ 8.4.D.2 (page 221)

4. **Timing and notice for permanency planning hearings.** New legislation clarifies the scheduling of permanency planning hearings when reunification efforts are ceased. G.S. 7B-507(c) has been rewritten to state that when the court determines that reunification efforts are not required or shall cease, the court must order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the determination to cease reunification efforts is made at a hearing that was properly noticed as a permanency planning hearing, the court may proceed in that hearing to consider the criteria in G.S. 7B-907, make findings of fact, and order a permanent plan for the child. If the determination to cease reunification efforts is made at any other hearing, the court must schedule a subsequent hearing within 30 days to address the permanent plan pursuant to G.S. 7B-907. [Section 3 of S.L. 2011-295]

Relevant manual sections:  
§ 2.6.E.6(b) (page 55)  
§ 7.4.E.1 (page 190)  
§ 7.4.F.1 (page 192)  
§ 8.4.B (page 218)

5. **Terminating guardianship.** New legislation alters the applicability of the Juvenile Code's restrictive requirements under G.S. 7B-600(b) for terminating a guardianship. Previously, these requirements applied only when guardianship had been ordered as a permanent plan. Now G.S. 7B-600(b) makes the requirements applicable only when guardianship is the permanent plan *and* the guardian is a party to the proceeding. There is no indication of when or how a guardian should be made a party to the juvenile action. The purpose of the change is not clear, and it is possible that legislative clarification will be sought in a later session. [Section 4 of S.L. 2011-295]

Relevant manual sections:  
§ 7.4.F.3 (page 192)  
§ 8.3.D.3 (page 216)  
§ 8.4.E.3(b) (pages 223–24)

6. **Delay of dispositional order.** Dispositional orders are required to be entered within 30 days of the hearing, and new legislation addresses delays beyond 30 days. The Juvenile Code already addressed delayed orders for review hearings and permanency planning hearings, and it was unclear why delays for disposition hearings were not also addressed. Now, nearly identical language is repeated in the Code for all three types of hearings. Now G.S. 7B-905(a) requires that when a disposition order is not entered within 30 days following completion of the disposition hearing, the juvenile clerk must schedule a hearing at the next session of juvenile court for a determination and explanation of the reason for the delay and to obtain any needed clarification as to the contents of the order.

An order must be entered within ten days of this subsequent hearing. [Section 9 of S.L. 2011-295]

Relevant manual section:  
§ 8.5.A (page 225)

- 7. Placement responsibility.** G.S. 7B-507(a)(4) requires that any order providing for a child to remain or be placed in DSS custody specify that the child's placement and care are DSS's responsibility and that DSS is to provide or arrange for the placement. New legislation adds a provision that the court, after considering DSS's recommendations, may order a specific placement the court finds to be in the child's best interest. [Section 3 of S.L. 2011-295] (The new language is consistent with the federal government's interpretation of the Title IV-E funding requirement for the placement responsibility finding. See Children's Bureau, Administration for Children and Families, Child Welfare Policy Manual, § 8.3A.12, available at [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=31#207](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=31#207).)

Relevant manual sections:  
§ 2.6.E.5(b) (page 54)  
§ 5.6.F (page 147)  
§ 7.4.C.2(a) (page 186)  
§ 7.4.D.1 (page 188)

- 8. Kinship placement and custody.** The court of appeals held in *In re D.L.*, \_\_\_ N.C. App. \_\_\_, 715 S.E.2d 623 (Sept. 20, 2011), that where the children were in a safe placement with a relative and the parties stipulated to an adjudication of neglect, the trial court did not abuse its discretion when it "sanctioned" continued placement with the relative but left custody with the mother. The court of appeals emphasized that the trial court had not ordered physical placement of the children with the relative, but had approved the mother's decision about where the children should be placed.

Relevant manual sections:  
§ 7.4.B & C (pages 186–87)

- 9. Visitation by registered sex offender.** In a civil custody case, *Bobbitt v. Eizenga*, \_\_\_ N.C. App. \_\_\_, 715 S.E.2d 613 (Sept. 6, 2011), the court of appeals held that the fact that a parent was required to register as a sex offender did not affect his right to seek visitation with his child. Loss of parental rights results automatically only upon conviction of first- or second-degree rape that resulted in the conception of the child. See G.S. 14-27.2, 14-27.3, and 50-13.1.

Relevant manual sections:  
§ 8.5.B.5 (page 227)

## F. Best Interest Determinations

In two recent cases, the court of appeals discussed the appropriate application of the best interest standard. In *In re D.M.*, \_\_\_ N.C. App. \_\_\_, 712 S.E.2d 355 (April 19, 2011), an award of permanent custody to the grandmother was reversed where the child had been adjudicated dependent (not abused or neglected) and the court had specifically found that neither parent was unfit. The trial court could not award permanent custody to a non-parent without first finding that the parents were unfit or had acted inconsistently with their constitutionally protected parental status. In another case, *Rodriguez v. Rodriguez*, \_\_\_ N.C. App. \_\_\_, 710 S.E.2d 235 (April 19, 2011), an adjudication of dependency alone was not sufficient in a later custody action to show that the mother had acted inconsistently with her parental status. The trial court's findings were not sufficient to show that the mother voluntarily engaged in conduct that would trigger forfeiture of her protected parental status.

Relevant manual sections:

§ 7.4.A.2 (page 184)

§ 8.4.D.1(b) (page 220)

## V. Termination of Parental Rights

### A. TPR Procedures

1. **Service of motion in TPR cases.** New legislation adds a new subsection, G.S. 7B-1102(b1), to require that when a motion to terminate parental rights is served on a parent pursuant to G.S. 1A-1, Rule 4, a copy of the motion and notice be sent to the parent's attorney if the parent has an attorney of record. [Section 4.1 of S.L. 2011-332]

New legislation also changes Rule 5 of the Rules of Civil Procedure and therefore affects service of TPR motions that are not served pursuant to Rule 4. For an explanation of this change, see *supra* § III.A.

Relevant manual sections:

§ 4.4.C (pages 99–100)

§ 9.7.C (page 252)

2. **Petitioner to send notice of termination hearings.** New legislation changes G.S. 7B-1106(b)(5), relating to the content of the TPR summons, to provide that the petitioner (instead of the clerk) will mail notice of the date, time, and place of any pretrial hearing and the hearing on the petition. [Section 13 of S.L. 2011-295]

Relevant manual section:

§ 9.7.B.2 (page 251)

3. **Extension of time to file answer or response.** New legislation amends G.S. 7B-1108(a)

to add a provision that only a district court judge may grant an extension of time to file an answer or response to a termination of parental rights petition or motion. [Section 14 of S.L. 2011-295]

Relevant manual section:  
§ 9.8 (page 254)

- 4. *Petitioner, not GAL, to search for unknown parent.*** G.S. 7B-1105(b) has been rewritten to state that the court may order the petitioner in a TPR proceeding to conduct a diligent search for an unknown parent, and to remove the language stating that the court may appoint a GAL to conduct such a search. [Section 12 of S.L. 2011-295]

Relevant manual section:  
§ 9.6.A.4 (page 249)

## **B. TPR Grounds and Adjudication**

- 1. *Rules of evidence in civil cases apply to TPR adjudication.*** A provision was added to G.S. 7B-1109(f) to state explicitly that the rules of evidence in civil cases apply at the adjudicatory hearing in a TPR proceeding. [Section 15 of S.L. 2011-295]

Relevant manual sections:  
§ 9.10.A (page 258)  
§ 11.A.1 (page 295)  
Hearing Checklist for Termination of Parental Rights

- 2. *Willfully leaving child in foster care or other placement.*** Where the child was placed with guardians pursuant to G.S. 7B-600, the father argued that in considering this ground for termination, the court should have looked only at the period of time prior to the appointment of the guardians. The court of appeals disagreed, noting that this ground does not require that the juvenile be in DSS custody, that G.S. 7B-600 and this ground “do not intersect in any way,” and that guardianship does not affect the parent’s ability to correct the conditions that led to removal. *In re D.H.H.*, \_\_\_ N.C. App. \_\_\_, 703 S.E.2d 803 (Dec. 21, 2010).

Relevant manual section:  
§ 9.11.B. (pages 263–64)

- 3. *Dependency; appropriate alternative child care arrangement.*** In order for a parent to have an appropriate alternative child care arrangement, the parent must have taken some action to identify viable alternatives. It is not enough that the parent merely goes along with a plan initiated by DSS. *In re L.H.*, \_\_\_ N.C. App. \_\_\_, 708 S.E.2d 191 (March 15, 2011).

Relevant manual section:  
§ 9.11.F.2 (page 268)

### C. TPR Disposition and Best Interest Determination

- 1. Evidence at TPR disposition.** New legislation clarifies the evidentiary standards at TPR disposition. G.S. 7B-1110(a) has been rewritten to add a sentence that authorizes the court at disposition in a TPR proceeding to consider any evidence, including hearsay as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the child's best interests. [Section 16 of S.L. 2011-295]

Relevant manual sections:  
§ 9.12.B.3 (page 272)  
§ 11.B (page 297)  
Hearing Checklist for Termination of Parental Rights

- 2. Best interest statutory criteria; findings required.** G.S. 7B-1110(a) sets out specific criteria the court must consider in determining whether TPR is in a child's best interest. New legislation requires the court, in addition to considering statutory criteria that are relevant, to make written findings about those criteria. Note that this new statutory language supersedes case law cited in the manual that interprets the previous version of the statute as not requiring written findings. [Section 16 of S.L. 2011-295]

Relevant manual sections:  
§ 9.12.C (page 272)  
§ 9.13.A.3(d) (page 276)  
Hearing Checklist for Termination of Parental Rights

- 3. Compliance with case plan not relevant to best interest determination.** In *In re Y.Y.E.T.*, \_\_\_ N.C. App. \_\_\_, 695 S.E.2d 519 (July 6, 2010), the parent argued that the trial court abused its discretion in finding it was in the child's best interest to terminate parental rights, because the parent had complied with the case plan. The court of appeals disagreed, stating that "compliance with the case plan is not one of the factors the trial court is to consider in making the best interest determination." Although the parents had completed substantial parts of their case plan, they had not accepted responsibility for or explained the child's injuries, supporting the conclusion that the child would be at risk if returned home.

Relevant manual section:  
§ 9.12.C (pages 273–74)

### D. Selection of Adoptive Parents

New legislation relocates the subject of the selection of adoptive parents within the Juvenile

Code. G.S. 7B-908(f) was deleted from the post-TPR review provisions, and a new G.S. 7B-1112.1 was added to the TPR provisions. In addition to relocating this subject, some changes were made to procedural requirements.

Under the new statute, the process of selecting specific adoptive parents remains the responsibility of and within the discretion of DSS (or licensed child-placing agency). As before, the GAL may request information from and consult with DSS concerning the process, and DSS must provide the information within five business days (the previous version of the statute said five days, not five business days). Now, however, DSS must notify the GAL of the selection of prospective adoptive parents within ten days of the selection and *before the filing of the adoption petition*. If the GAL disagrees with the selection, the GAL must file a motion within ten days after being notified and schedule the case for hearing on the next juvenile calendar. (Previously, the GAL's motion had to be filed within 10 days after notification that an adoption petition had been filed.) DSS may change the child's placement to the home of the prospective adoptive parents only after the ten days (within which the GAL could file a motion) have passed without the filing of a motion. At the hearing on a GAL's motion, the court is required to consider the recommendations of DSS and the GAL as well as "other facts related to the selection of adoptive parents," and then must determine whether the proposed adoptive placement is in the child's best interest.

[Sections 10 and 18 of S.L. 2011-295]

Relevant manual sections:

§ 9.13.C (pages 277–78)

§ 10.3.C.1 (page 287)

§ 10.3.D & E (page 288–89)

Hearing Checklist for Post-Termination of Parental Rights

## **E. Post-Termination of Parental Rights**

- 1. *Post-TPR review considerations and findings.*** G.S. 7B-908(c) sets out specific factors the court is required to consider in a post-TPR review hearing, and new legislation requires the court to make written findings regarding those that are relevant. The new law also adds a fourth consideration, "whether the current placement is in the juvenile's best interest." [Section 10 of S.L. 2011-295]

Relevant manual sections:

§ 10.1.E.3 (page 283)

Hearing Checklist for Post-Termination of Parental Rights

- 2. *Authorized court orders.*** G.S. 7B-908(d), related to court orders after post-TPR review hearings, has been rewritten. The new version expands the court's authority regarding the child's placement following a review hearing, but only if the child is not in an adoptive placement. After making findings of fact, the court may either:
  - (1) affirm DSS's or a child-placing agency's plans for the child, or

(2) if the child is not placed with prospective adoptive parents, order a placement or a different plan the court finds to be in the child's best interest after considering the department's recommendations.

In either case, the court may require specific additional steps that are necessary to accomplish a permanent placement that is in the child's best interests. [Section 10 of S.L. 2011-295]

Relevant manual sections:

§ 10.1.F (page 283)

Hearing Checklist for Post-Termination of Parental Rights

**3. Selection of adoptive parents.** New legislation eliminates G.S. 7B-908(f), relating to the selection of adoptive parents. This subject is addressed instead in a new provision added to the TPR section of the Code, as G.S. 7B-1112.1. *See supra* § V.D. related to this subject. [Section 10 of S.L. 2011-295]

Relevant manual sections:

§ 10.3.C.1 (page 287)

§ 10.3.D & E (pages 288–89)

Hearing Checklist for Post-Termination of Parental Rights

## F. Reinstatement of Parental Rights

**Introduction.** Legislation added new G.S. 7B-1114, establishing for the first time a juvenile court proceeding in which the court may reinstate the parental rights of a parent whose rights have been terminated. Previously, the only means of regaining parental rights was for the parent to adopt the child. Note that the phrase “preliminary hearing” is used in this new statute to refer to the first hearing on the motion to reinstate, and the phrase “interim hearing” is used to refer to subsequent periodic hearings. [Section 18 of S.L. 2011-295]

**Circumstances for reinstatement.** Circumstances in which the procedure is available are narrow:

- A motion to reinstate parental rights may be filed only by the guardian ad litem attorney or a DSS that has custody of the child.
- The child must be at least 12 years old or, if the child is younger than 12, the motion must allege extraordinary circumstances requiring consideration of the motion.
- The juvenile must not have a legal parent, must not be in an adoptive placement, and must not be likely to be adopted within a reasonable time.
- The order terminating parental rights must have been entered at least three years before the motion is filed, unless the juvenile's attorney advocate and the DSS with custody stipulate that the child's permanent plan is no longer adoption.

[G.S. 7B-1114(a)]

**Notification to child and appointment of GAL.** If a motion could be filed and a parent

contacts DSS or the child's GAL about reinstatement of the parent's rights, DSS or the GAL must notify the child that the child has a right to file a motion for reinstatement of parental rights. [G.S. 7B-1114(b)] If the child does not have a GAL when a motion to reinstate parental rights is filed, the court must appoint one. The appointment, duties, and payment of the GAL and GAL attorney are the same as in G.S. 7B-601 and 7B-603. [G.S. 7B-1114(c)]

**Service of motion.** The party filing the motion must serve it on each of the following who is not the movant:

- the child,
- the child's guardian ad litem or guardian ad litem attorney,
- the DSS with custody of the child, and
- the former parent whose rights the motion seeks to have reinstated.

[G.S. 7B-1114(d)]

**Former parent not entitled to appointment of counsel.** Although the former parent must be served, the former parent is not a party and is not entitled to appointed counsel if indigent, but may retain counsel at his or her own expense. [G.S. 7B-1114(d)]

**Timing.** The party filing the motion must ask the clerk to calendar it for a preliminary hearing on the motion for reinstatement within 60 days of the filing of the motion and must give at least 15 days notice to those who were required to be served and to the child's placement provider (who is not made a party by virtue of receiving notice). [G.S. 7B-1114(e)] At the conclusion of the preliminary hearing, the court must either dismiss the motion or order that the child's permanent plan become reinstatement of parental rights. If the motion is not dismissed at the preliminary hearing, the court must conduct interim hearings at least every six months until the motion is granted or dismissed. [G.S. 7B-1114(h)] The court must grant or dismiss the motion within 12 months from the date the motion was filed unless the court makes written findings about why that cannot occur and specifies a time frame for entering a final order. [G.S. 7B-1114(j)] After an order reinstating parental rights, the court is not required to conduct further reviews. [G.S. 7B-1114(k)]

**Pre-hearing reports.** At least seven days before the preliminary hearing, DSS and the child's GAL must provide the court, the other parties, and the former parent with reports that address a list of factors specified in the new statute. [G.S. 7B-1114(f)]

**Participants.** At the preliminary hearing and any subsequent hearing on the motion, the court must consider information from the DSS that has custody of the child, the child, the child's GAL, the child's former parent whose parental rights are the subject of the motion, the child's placement provider, and any other person or agency that may aid the court in its review. [G.S. 7B-1114(g)]

**Evidence and standard for review.** The court may consider any evidence, including hearsay, that the court finds to be relevant, reliable, and necessary to determine the needs of the child and whether reinstatement is in the child's best interest. [G.S. 7B-1114(g)]

**Criteria and findings.** The court must consider the following criteria and make written findings regarding those that are relevant:

- What efforts were made to achieve adoption or a permanent guardianship.
- Whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the child's removal and termination of the parent's rights.
- Whether the child would receive proper care and supervision in a safe home if placed with the parent.
- The age and maturity of the child and the ability of the child to express the child's preference.
- The parent's willingness to resume contact with the child and to have parental rights reinstated.
- The child's willingness to resume contact with the parent and to have parental rights reinstated.
- Services that would be needed by the child and the parent if the parent's rights were reinstated.
- Any other criteria the court deems necessary.

[G.S. 7B-1114(g)]

**Interim hearings and reasonable efforts.** Interim hearings may be combined with post-TPR review hearings. At each interim hearing the court must assess whether the plan of reinstatement continues to be in the child's best interest and whether DSS has made reasonable efforts to achieve the permanent plan. [G.S. 7B-1114(h)]

**Orders.** After every hearing, whether preliminary or interim, the court must make proper findings of fact and conclusions of law, and the court may

- enter an order for visitation under G.S. 7B-905(c), or
- order that the child be placed in the former parent's home and supervised by DSS either directly or, when the former parent lives in a different county, through coordination with the DSS in that county, or by other personnel available to the court, subject to any conditions the court specifies.

[G.S. 7B-1114(i)] Orders from any type of reinstatement hearing must be entered within 30 days following the completion of the hearing. If an order is not entered within that time, the clerk must schedule a subsequent hearing at the next session of juvenile court to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order must be entered within ten days of the subsequent hearing. [G.S. 7B-1114(l)]

**Effect of reinstatement.** An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent to the child, including those relating to custody, control, and support. [G.S. 7B-1114(k)] A parent whose rights are reinstated is not liable for child support or the cost of services provided to the child after the termination order and before the reinstatement order. [G.S. 7B-1114(n)] Reinstatement does not vacate or otherwise affect the validity of the original order terminating parental rights. [G.S. 7B-1114(m)]

Relevant manual sections:

This statute addresses an entirely new procedure and is most relevant to chapters 9 and 10 of the manual.

## VI. Evidence

### A. Rules of Evidence in TPR Cases

As discussed in sections V.B.1 and V.C.1, above, new legislation makes clear that adjudication and disposition hearings in TPR cases are subject to the same evidentiary rules as adjudication and disposition hearings in abuse, neglect, and dependency cases. [Sections 15 and 16 of S.L. 2011-295]

Relevant manual sections:

§ 11.A.1 (page 295)

§ 11.B (page 297)

### B. Constitutionality of Remote Testimony by Children

In *State v. Jackson*, \_\_\_ N.C. App. \_\_\_ (Oct. 4, 2011), the court of appeals addressed the permissibility in a criminal case of a child testifying remotely (that is, by closed circuit television), pursuant to G.S. 15A-1225.1, in light of the U.S. Supreme Court's Confrontation Clause decision in *Crawford v. Washington*, 541 U.S. 36 (2004). The court of appeals held that *Crawford* did not overrule earlier decisions holding that a child may testify remotely in a criminal case when the court finds a sufficient showing of need and uses appropriate procedures for taking the child's testimony. Face-to-face confrontation is not required. For a further discussion of *Jackson*, including the possibility of future litigation about the decision, see Jessica Smith, *N.C. App. Holds that Maryland v. Craig Survives Crawford*, posting to North Carolina Criminal Law: UNC School of Government Blog (Oct. 13, 2011), available at <http://sogweb.sog.unc.edu/blogs/ncclaw/?p=2967>.

The Confrontation Clause does not apply to juvenile cases, but the Due Process Clause extends the right of confrontation to a respondent parent to some extent. In light of *Jackson*, the North Carolina courts likely will continue to uphold the constitutionality of remote testimony in juvenile cases when the testimony is otherwise appropriate.

Relevant manual section:

§ 11.2.B.1 (pages 301–03)

### C. Expert Testimony

1. **Revised rule of evidence on admissibility.** Among new limitations in civil tort actions, the General Assembly revised North Carolina Evidence Rule 702(a) in G.S. Chapter 8C, which is applicable to both criminal and civil cases. As amended, the rule allows an

expert witness to offer an opinion only if it meets three conditions: (1) the opinion is based on sufficient facts or data; (2) the opinion is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case. The amendment is effective for actions commenced on or after October 1, 2011. [Section 1.3 of S.L. 2011-283]

The revised rule may change North Carolina's approach to the admissibility of expert testimony. A trial judge acts as the gatekeeper for expert testimony, assessing among other things the reliability of the proffered testimony. In *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440 (2004), the North Carolina Supreme Court rejected the test for determining the reliability of expert testimony adopted in federal cases in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The court in *Howerton* instructed judges to follow North Carolina's own three-step approach to the admissibility of expert testimony, which, although similar to the federal approach for determining reliability, was considered by the court to be "less mechanistic and rigorous." *Howerton*, 358 N.C. at 464. The three-step approach in revised Evidence Rule 702, however, mirrors Federal Rule of Evidence 702, which itself was revised to codify the requirements of *Daubert*. The North Carolina General Assembly's adoption of these requirements may require greater scrutiny of expert testimony by the courts. It also may require reconsideration of subjects of expert testimony previously considered to be admissible.

For a further discussion of the changes to North Carolina Evidence Rule 702, see Alyson Grine, *Legislative Change Regarding Expert Testimony*, posting to Forensic Science in North Carolina Blog (Aug. 17, 2011), available at <http://ncforensics.wordpress.com/2011/08/17/legislative-change-regarding-expert-testimony/>.

Relevant manual section:  
§ 11.10.A (page 354)

- 2. Opinion about sexual abuse.** In *State v. Jennings*, \_\_\_ N.C. App. \_\_\_, 704 S.E.2d 556 (Jan. 18, 2011), the court held that it was permissible for an expert to testify that the lack of physical evidence of sexual abuse did not mean that the victim had not been sexually abused. The expert testified that had there been a tear in the victim's hymen, it would have healed by the time of the expert's medical examination a year after the alleged sexual abuse. The court found that this testimony did not amount to an impermissible opinion, without supporting physical evidence, that the victim had been sexually abused. Experts must remain cautious, however, about crossing this line. See *State v. Towe*, \_\_\_ N.C. App. \_\_\_, 707 S.E.2d 770 (March 15, 2011) (holding that expert testimony that 70 to 75 percent of sexually abused children show no clear physical signs of abuse and that the expert would put the victim in that category, without supporting physical evidence, was impermissible opinion that the victim had been sexually abused), *rev. granted*, 365 N.C. 202 (2011).

Relevant manual section:  
§ 11.10.C.6 (pages 358–59)

- 3. Repressed memory.** In *State v. King*, \_\_\_ N.C. App. \_\_\_, 713 S.E.2d 772 (Aug. 2, 2011), *rev. granted*, \_\_\_ N.C. \_\_\_ (2011), the court of appeals considered the scope of the trial court’s discretion under *Barrett v. Hyldburg*, 127 N.C. App. 95 (1997), which held that testimony by an alleged victim of sexual abuse about repressed memories is admissible only if (1) the testimony is accompanied by expert testimony explaining the phenomenon of memory repression, and (2) the expert testimony has sufficient scientific assurance of reliability that the repressed memory is an indicator of what actually transpired in the past. The State argued that because *Barrett* requires that evidence of delayed recall of traumatic events be accompanied by expert testimony about repressed memory, the trial judge abused his discretion in excluding the State’s expert testimony on the subject. The majority of the court of appeals held that *Barrett* did not obviate the gatekeeping function of trial judges to assess the reliability of expert testimony or remove their discretion to weigh the admissibility of evidence under N.C. Rule of Evidence 403. The majority upheld the trial court’s determination that even if the State’s expert testimony about repressed memory technically satisfied the three-pronged *Howerton* test (discussed in 1., above), the testimony was inadmissible under Evidence Rule 403 because its probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. The dissent in *King* observed that *Barrett* was instructive, though not controlling; and although agreeing that the trial judge had the discretion to exclude the expert testimony, the dissent found that the judge abused his discretion.

Relevant manual section:  
Expert testimony about repressed memories is not specifically addressed in the manual. For a discussion of other expert testimony topics involving children, see § 11.10.C, pages 356–60, of the manual.

## VII. Trial Court’s Role after Remand

The trial court erred when it failed to carry out the mandate of the court of appeals to make findings according to G.S. 7B-907(b) in a permanency planning order. However, the court of appeals rejected the respondent’s argument that the trial court erred in refusing to allow her to present evidence on remand, stating that whether to receive new evidence on remand is within the discretion of the trial court and in this case there was no abuse of discretion. *In re J.M.D.* \_\_\_ N.C. App. \_\_\_, 708 S.E.2d 167 (March 15, 2011).

Relevant manual section:  
§ 12.10.B.2 (page 391)

## VIII. Special Immigrant Juvenile Status

A class action settlement agreement raises the possibility that juveniles who had applied for

SIJS classification and whose petitions were denied or revoked may be eligible to file a motion to reopen the petition or the SIJ-based application for adjustment of status. The case giving rise to the agreement is *Perez-Olano, et al. v. Holder, et al.*, Case No. CV 05-3604, in the U.S. District Court for the Central District of California.

The settlement applies to all juveniles who are not U.S. citizens and who applied on May 13, 2005, or after that date, or who wish to apply for immigration status based on having been abused, abandoned, or neglected. The USCIS website states that a motion to reopen may be filed if the SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;
- dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or
- specific consent.

The source for the preceding information, as well as further information and instructions about filing the motion can be found on the USCIS website at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=bba3a56b8613c210VgnVCM100000082ca60aRCRD&vgnnextchannel=2492db65022e010VgnVCM1000000ecd190aRCRD>. Policy guidance issued by the USCIS for motions made under the settlement can be found in a USCIS April 2011 memo, available at: <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/April/perez-olano-settlement.pdf>.

Relevant manual section:  
§ 13.3 (pages 402–06)

## IX. FERPA

On April 11, 2011, the U.S. Department of Education announced a series of initiatives related to FERPA, stating, “Over time, interpretations of FERPA have complicated valid and necessary disclosures of student information without increasing privacy protections and, in some cases, dramatically decreased the protections afforded students.” To that end, a “chief privacy officer” was hired, a Privacy Technical Assistance Center was formed, and a series of technical briefs featuring best practices has been launched. The Department of Education now has a helpful “toolkit” website related to FERPA, available at:

<http://nces.ed.gov/programs/Ptac/Toolkit.aspx>. The Department of Education also has proposed new regulations that will impact FERPA. Information about the proposed regulations is available at: <http://www.federalregister.gov/articles/2011/04/08/2011-8205/family-educational-rights-and-privacy>.

Relevant manual section:  
§ 13.5 (pages 412–15)