

# Ex Parte Dismissal Hearings

## Attorneys use emergency hearings as tools to secure transitional housing for youth

### Background

Honoring Emancipated Youth (HEY) conducted a two-year study examining the process of youth's transition from foster care to independence in San Francisco County. The Emancipation Research Project (ERP) consisted of 30 in-depth interviews held 2008-2009 with professionals and youth involved in the county's dependency system. During the interviews with the professionals, an important tool surfaced that is used by attorneys when timing is essential: the *ex parte hearing*. In this context, it officially means an emergency court hearing in which only one party appears before a judge to request a dismissal from foster care, or emancipation, without a defendant's [the youth's] presence.<sup>1</sup>

### Transitional Housing Waiting Lists

The most common reason for an emergency dismissal hearing is to take advantage of a Transitional Housing Placement Program (THP-Plus) apartment opening. An average of 200 youth ages 18 to 24 age out of, or emancipate from, the San Francisco child welfare system each year. Yet there are only about 110 THP-Plus housing slots available. As a result of this high demand for housing, there are often long waiting lists.

Foster youth who have already emancipated from the system and have their dismissal hearing documents in hand are eligible for THP-Plus assistance if they attend school or are working. Prior to emancipation, social workers refer youth to a THP-Plus program, usually with the assistance of a worker at the Independent Living Skills Program (ILSP). Most programs assist the youth with rental payments, requiring that they contribute more money to their rent over time. Youth are often on the waiting list to be approved by a THP-Plus housing provider months before they are emancipated.

### Anticipating Housing Approval Letter

Child Welfare Workers attempt to anticipate when the THP-Plus housing approval letter might arrive so they can reserve the youth's dismissal hearing date with the court. Unfortunately, sometimes the two dates can't be matched; that is when the *ex parte* hearing is used to dismiss the youth. During the ERP interviews, one attorney described the common use of the *ex parte* hearing: This attorney added that the youth (or any involved party) does have a right to contest the hearing. At that point, the attorney would present evidence justifying the immediate dismissal, which is most often to place the youth in THP-Plus housing. She further reported that not one of her *ex parte* hearings had ever been contested. Importantly, youth, and other parties if relevant, should always be part of the decision to emancipate using an *ex parte* hearing; it should never be done without a youth's consent.

### Strategies

*Ex parte* hearings are effective, if highly inefficient, tools enabling San Francisco courts and social workers to collaborate to respond to immediate needs of emancipated foster youth. However, they only address a symptom of the larger problem, not the root cause. Youth and their advocates are already struggling to access the resources available during the emancipation period. If youth were offered a set date or period of time to move in to THP-Plus apartments, they would experience much smoother transitions into independence. Reducing the need for emergency hearings would also greatly decrease inconvenient rescheduling for the many busy individuals and agencies involved.

*"A lot of times, a dismissal hearing happens as an ex parte emergency order, because the kid wants to get into some [THP-Plus]"*

Streamlining communication strategies for available move-in dates would lessen the stress on those agencies involved in the emancipation hearing, and improve outcomes for youth. HEY understands that the law requires youth to have an officially closed case and a W&IC 391 hearing before they can legally enter a THP-Plus program. However, HEY encourages creative solutions to develop flexible move-in dates, allow youth a transitional temporary placement, or a method to "hold" the THP-Plus placement while waiting for their set court hearing. Also, counties could reconsider their invoicing and reimbursement process so THP-Plus programs are not incentivized to demand a placement immediately to ensure they fulfill their contract and get full allocations. The "emergency" nature of the *ex parte* hearing invites the possibility of dismissal without a complete fulfillment of the 391 requirements, and is therefore not the ultimate solution. Nevertheless, as agencies and organizations continue to improve their systems while working within the legal limitations of THP-Plus funding, the *ex parte* hearings remain an effective strategy to transition youth out of the foster care system in San Francisco.

If you know a youth who may benefit from this practice, or you wish to understand more about the *ex parte* hearing, contact [dmandolesi@uwba.org](mailto:dmandolesi@uwba.org).

<sup>1</sup> Lectric Law Library. *The 'Lectric Law Library's Lexicon On \* Ex Parte \**. <http://www.lectlaw.com/def/e051.htm>

Release Date – July 2009

