Knowledge of Child Development in Custody Cases: The Proper Weight of the Child’s Preference and Model Interview Techniques

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This paper will discuss the importance of child development expertise in determining the proper weight to be given to a child’s preference and in conducting effective interviews. Information about psychological theories and studies is often found in mainstream law reviews. Psychological information is spread throughout legal discussions but is not always followed by judges and attorneys. In New York, attorneys for the child must advocate for the child’s expressed interest, however, the court determines custody based on the best interest standard. The court weights several factors in determining what is in the child’s best interest; one such factor is the child’s preference. Although the child’s preference is often given some degree of weight by the court in making its custody determination, it is not generally a determinative factor. The more reliable that preference is, based upon sound interviewing techniques, the more weight it should be given by the court.

When determining the weight to be afforded to the child’s preference, the court often looks to the age and maturity of the child. Unfortunately there are misconceptions with regard to what age a child can express their preference in an appropriate way. Psychological studies suggest that children are able to express their preference at a younger age than previously thought. Prior to discussing misconceptions associated with the child’s preference, a discussion of the background within child custody determinations will be beneficial. Interview techniques that may be useful in properly ascertaining a younger child’s views/preference will also be discussed.

Current Standards Regarding Child Preference for Attorneys for the Child and Judges

In custody proceedings an attorney is appointed to represent any child(ren) involved in and/or the subject of litigation. Article Six of the Family Court Act provides guidelines as well as definitions of the benefit of the attorney for the child with regard to the child’s representation.

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1. Family Ct. Act § 241
An attorney representing a minor in such court proceedings is appointed to assist in protecting the minor’s interests and expressing that minor’s wishes. According to § 249, “in any other proceeding which the court has jurisdiction, the court may appoint an attorney to represent the child, when, in the opinion of the family court judge, such representation will serve the purpose of this act, if independent legal counsel is not available to the child.” Also the attorney may be appointed to represent the child in the future if the child has further proceedings within family court.

Another source of reference provided for the attorney for the child is the Rules of the Chief Justice. Section 7.2 of the Rules of the Chief Justice provides the attorney for the child with definitions, as well as rules regarding the child’s representation. According to § 7.2, the attorney for the child is subject to the same disciplines as other attorneys, must zealously advocate for his or her client’s position(s), as well as consult and advise his or her client in a way consistent with the child’s capacities. In representing the client (the child), the attorney for the child should be directed by the child’s wishes and only in extreme circumstances may recommend what they believe to be in the child’s best interests.

In order to recommend and/or advocate for a position which is not in accordance with the child’s expressed wishes, the attorney must meet an exception. Case law suggests that “a law guardian may properly attempt to persuade the court to adopt a position which would best promote the best interest of the child even if contrary to the child’s wishes if allowed by the circumstances.” Such circumstances may include a substantial risk of imminent, serious harm to

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3 Family Ct. Act § 249.
4 Rules of Chief Justice § 7.2.
5 Id.
the child or the fact that the child lacks the capacity to express a preference. Even though such recommendations are taken into consideration, the court does not consider the attorney for the child’s position(s) as determinative.8

Another source of information for the attorney for the child is the Attorney For the Children Program Administrative Handbook for Attorneys For Children. According to the handbook for the New York State Supreme Court Appellate Division, Fourth Department, the representation commences immediately after being notified of the appointment.9 After being appointed, the attorney for the child should contact and interview the child as soon as possible (preferably prior to the first court appearance).10 Once representation has begun, the attorney for the child should maintain frequent contact with their client to provide guidance and advice.11 This allows the attorney for the child the opportunity to address any questions or concerns the child may have during the course of the representation. It is the attorney for the child’s duty to become familiar with the facts of the case and to conduct a full investigation in order to provide appropriate representation for the child.12 This will also provide the attorney for the child a proper basis to determine what remedies and services are available for his or her client.

The attorney for the child should be well aware of the factors the judge will consider in determining what is in the child’s best interest. With knowledge of these factors, the attorney for the child will be better prepared to advocate for the expressed wishes of the client. It will also provide a possible argument as to how much weight each of the considered factors should be afforded. The attorney for the child should also have knowledge of the child’s current

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7 Rules of Chief Justice § 7.2.
9 Tracy M. Hamilton, Attorney For Children Program Administrative Handbook For Attorney For Children, New York State Supreme Court Appellate Division, Fourth Department (2011) at 5.
10 Id.
11 Id.
12 Id.
environment and what effects, if any, it has on the child’s position/preference. Depending on the child’s relationship with his or her parents, the child’s preference may be distorted by outside influences and pressures. For instance, “if a judge feels that the child’s preference has been tainted by one parent’s negative comments about the other, the judge may not weigh the preference as heavily as a factor in the determination.”

The judge will take the attorney for the child’s position into consideration during the court proceedings; “the position of the attorney for the child is relevant to the proceedings.” Therefore, it is important for the attorney for the child to advocate for the expressed wishes of their client because it is probable that weight will be added to the child’s preference in the eyes of the court. “The weight to be given the child’s wishes rests within the sound discretion of the court.”

With issues involving the welfare of a child, the court considers what is in the best interest of the child. In determining what is in the child’s best interest, the judge weighs several factors.

The factors to be considered include: (1) the quality of the home environment and the parent guidance the custodial parent provides for the child. (2) The financial status and the ability of each parent to provide for the child. (3) The ability of each parent to provide for the child’s emotional and intellectual development. (4) The individual needs of each child... the desires and preference of each child... (5) The demonstrated parenting ability and demonstrated fitness of the parties. (6) The love, affection, and nurturing given by each party to the child, the emotional bond between the child and each party, and the willingness and ability of each party to put the child’s needs ahead of his/her own. (7) The willingness and ability of each party to facilitate and encourage a close and optimum relationship between the child and the other party. (8) Any other factor deemed relevant...

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12 2-12 Child Custody and Visitation § 12.05(3)(c)(ii)
14 2-12 Child Custody and Visitation § 12.05.
The judge may consider any factor she or he deems appropriate in making a determination. This may include giving weight to the position/testimony put forth by the attorney for the child. The court takes the attorney for the child’s recommendations into consideration, however, if the positions are not supported by testimony and evidence presented within the case the court may reject such recommendations. The recommendations made by the attorney for the child are important to the court but they are not determinative.

According to the Fourth Department, the child’s preference should be considered along with the child’s age and level of maturity. In addition to the age and maturity of the child, the fitness of the preferred and nonpreferred parent, reason(s) expressed for preference, hostility of child to the nonpreferred parent, and existence and preference of other siblings should also be considered when determining how much weight should be given the child’s preference.

Based on case law and research, maturity and age of the child are the predominate factors in determining the weight to be given the child’s preference. “While the expressed wishes of children are not controlling, they are entitled to greater weight, particularly where their age and maturity would make their input particularly meaningful.” Usually the age of preference is between age ten and fourteen unless the preferred parent is seen as unfit. Generally, “as a child ages, [ ] his or her wishes are given increasing weight.” The Judge also considers the wishes of children between six and twelve to be persuasive but not controlling. However, children younger than six are generally given very little weight.

20 2-12 Child Custody and Visitation § 12.05.
22 2-12 Child Custody and Visitation § 12.05.
23 Id. at (3)(a).
24 2-12 Child Custody and Visitation § 12.05 at (3)(a).
25 Id.
In short, "most judges consider the child’s preference if the child is of sufficient age, maturity and understanding." 26 Consequently, "courts will give a child’s preference greater weight when it is based on logical and rational thought," which is generally seen in older children. 27 Although "the advanced age of the child tends to render greater weight to his or her reasoned wishes, the child’s preference is but one factor in the best interest analysis." 28

Before determining how much weight to afford the child’s preference the court must first obtain the child’s preference. This can be done through an in-camera interview with the judge and/or through an interview with the attorney for the child, who then advocates for the expressed preference. Unless seen as absolutely necessary, children are generally kept out of the court room and prevented from having to disclose his or her reasons for the expressed wishes to his or her parents. The court does not want to encourage a child to choose sides openly in court. The court believes that "children must be protected from having to openly choose between parents or openly divulge intimate details of their respective parent/child relationship." 29

Even though the court may obtain the child’s preference, "family court is not required to abide by the wishes of the child to the exclusion of the other factor in the best interest analysis...when the record supports a finding that a child’s wishes are ‘confused and changing,’ they may be given little weight." 30 In other words, if the child’s expressed desires seem inconsistent the weight afforded such wishes decrease or will be considered miniscule. Also, if "the reason for [a child’s] preference [ ] indicate[s] that no weight should be given the child’s choice," the court will afford the expressed preference with little or no weight at all. 31

26 3-32 Family Law and Practice § 32.06(5)(e).
27 3-32 Family Law and Practice § 32.06(5)(e).
30 Id. at 2
instance, if the child does not want to live with a particular parent specifically because they have stricter rules and encourage homework be done prior to outside activities, the judge will likely afford no weight to that preference. As stated, the court has the final discretion when determining how much weight to afford the child’s preference, if any is given at all.

Age of Competence and Interviewing Techniques Used to Obtain a Child’s Preference Effectively and Accurately

Although the age of preference differs, research shows that children are capable of communicating their preference at a younger age than previously thought. Case law suggests that as a child gets older the weight afforded their preference increases. One case reported children ages six and four possessed “neither the emotional maturity nor the intellectual insight to decide which parent they will live with.” Another case reported that “a child of 10 or 11 years of age generally is not of sufficient maturity to weigh intelligently the factors essential to making a wise choice as to custody.” Based on the case law, the weight given the child’s preference is discretionary and ranges depending on the judges’ views.

In another case, the judge determined that a trial court erred in making a determination based solely on a 15 year old girl’s preference; the court of appeals held that too much weight was given to the child’s preference. However, a more recent case suggests that the age of preference is age fourteen (14). These cases suggest that the weight afforded to the child’s preference is discretionary, and the amount of weight given, based on the age and maturity of the child, is subjective at best. Different judges have different opinions, and the case law represents this subjective standard.

34 Fox v. Fox 177 A.D.2d 209 (N.Y. App. Div. 4th Dep’t 1992) at 211.
As presented in the case law, judges believe that more weight should be afforded to children in the early teenage years, however, various law review articles and notes disagree with this determination. The commentary to Model Rules of Professional Conduct § 1.4 indicates that even a child as young as five or six and certainly those of ten or twelve will have the ability to understand, deliberate upon, and reach conclusions about matters affecting their lives and own well-being. The trend of presuming that children do not possess the capacity to share their preference needs to be reversed. It is thought that many “young children have greater decisionmaking capabilities than the law recognizes.”

Studies have shown that “nine-year-olds are capable of meaningful involvement in personal health-care decision making, even if their developing competencies are not sufficiently matured to justify autonomous decision making… Additionally evidence suggest that… where decisions are relatively uncomplicated, even elementary school children may make reasonable decisions when given the opportunity to exercise consent.” Another article suggests that “an important component of a child’s maturity is the ability to correctly perceive, and place into perspective, the events that surround his or her life. Perception increases as children mature past the age of eleven… This suggests that judges should trust the ability of children over the age of eleven to understand the consequences and the future impact of their custody decisions.”

It is believed that children age twelve and over will typically have adult-like reasoning skills and their decisions are highly rational. Therefore, children over the age of twelve should

37 Linda D. Elrod, Client-Directed Lawyers for Children: It is the “Right” Thing to Do, 27 Pace L. Rev. 869, 914 (2007) (discusses child capacity, the ABA Model Rules of Professional Conduct, and bright line age rules).
38 Id. at 912. (discussion of capacity of children and whether there are bright line rules to the proper capacity).
40 Id. at 833.
42 Id. at 464.
be deemed “mature” and given controlling preference...provided that the chosen parent is not unfit.”43 According to a 2003 empirical survey, “about 50% of the respondents indicated that the preference of children aged three to five were possibly significant.”44 Considering children between the ages of three and five are capable of expressing their preference in a significant manner, the courts should consider affording more weight to these children’s expressed wishes as well.

Even though children are able to express their preference at a younger age, the attorney for the child should continue to be aware of undue influences. Psychological “studies suggest that young children are capable of providing accurate and meaningful information about their experiences, perceptions, thoughts, and feelings, but are also susceptible to the effects of suggestion, bias, and pressure.”45 As children get older they become “less susceptible to following their parent’s urgings.”46

Knowing that the child may be influenced by his or her parents and that they have the capacity to express their wishes at an early age, it is the attorney’s duty to act on the child’s behalf and advocate for the expressed wishes of the child.47 Although not controlling, the judges generally believe the positions set forth by the attorney for the child; the positions are viewed as

43 Kathleen Nemecheck, Child Preference In Custody Decisions: Where We Have Been, Where We Are Now, Where We Should Go, 83 Iowa L. Rev. 437, 464 (1998)
47 Tracy M. Hamilton, Attorney For Children Program Administrative Handbook For Attorney For Children, New York State Supreme Court Appellate Division, Fourth Department (2011) at 5.
important. Recent empirical data suggests that judges and attorneys place little faith in the ability of children to make informed and rational decisions.  

**Child Development Theories Established Within the Legal Community**

Knowing the misconceptions with regards to a child’s preferences and their ability to make informed and rational decisions, it is important for judges and attorneys representing children to have knowledge of child development theories. “Child development theory should be of great importance to child preference analysis...Determining when children are mature enough to make reasoned decisions is the key to deciding which children will be able to express a preference that courts should respect and enforce.  

If a child can understand why decisions are made, there is less chance that the child will feel compelled to make a decision based on a false perception. Children over the age of eleven are able to consider alternative solutions to a given problem before reaching a conclusion. According to psychology experts “a child’s ability to understand and participate in meaningful adult conversations begins at a relatively young age.” At a minimum, “children over the age of twelve should be deemed “mature” and given a controlling preference.”  

A relatively well-known name in the field of psychology is Jean Piaget. He began his work on his theory of mental development in the 1920’s and dominated the child development field for most of the 20th century. Piaget was famous for his four stage model of development.

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48 Id.  
50 Id. at 462.  
51 Id. at 463.  
52 Id.  
53 Id.  
54 Id. at 464  
56 Id. at 171.  
57 Id. at 164.
According to his theory children experience changes in their thought process three times over their life span, with changes occurring at ages two, seven, and eleven.\textsuperscript{58} The four stages of development included the sensorimotor (birth to two years old), preoperational (two to six years old), the concrete operational (seven to eleven years old), and the formal operational stage (eleven years old and above).\textsuperscript{59}

Piaget believed that children would move through the stages of development at different rates, with some moving at faster rates depending on their ability and experiences.\textsuperscript{60} During the elementary-school years, "children enter a stage of cognitive development that is distinctly more adultlike and much less childlike."\textsuperscript{61} He emphasized constructivism, "the view that children are active participants in their own development who systematically construct even more sophisticated understandings of their world."\textsuperscript{62}

According to Piaget, "children ages seven to eleven begin to develop a more concrete sense of perception... [they are able to] see contradictions and engage in logical thinking, and by the end of this stage, they are able to deal with hypothetical situations."\textsuperscript{63} However, "children ages six to eight will often have trouble understanding what is being asked of them" and are hesitant to ask clarifying questions.\textsuperscript{64} Child development theory should play a larger role within custody decisions since "prohibiting children from providing input into these major life decisions is damaging and often unnecessary."\textsuperscript{65} For younger children interviewing techniques are key.

\textsuperscript{58} Id.
\textsuperscript{59} Id. at 165.
\textsuperscript{60} Id.
\textsuperscript{61} Id.
\textsuperscript{62} Id. at 171.
\textsuperscript{63} Kathleen Nemechek, Child Preference In Custody Decisions: Where We Have Been, Where We Are Now, Where We Should Go, 83 Iowa L. Rev. 437, 464(1998).
\textsuperscript{64} Id.
\textsuperscript{65} Id. at 466-467.
Lev Vygotsky, a Russian psychologist, is known for one of the original and most influential sociocultural theories within the psychology field. He saw “development as an apprenticeship in which children advance when they collaborate with others who are more skilled.” Vygotsky is famous within the field of psychology for filling in some gaps of Piaget’s theories, as well as for his theory of scaffolding.

Vygotsky argues “that by participating in activities slightly beyond [a child’s] competence with the assistance of individuals who possess greater skill, children develop higher level psychological processes which they will eventually be able to carry out independently.” Therefore, it would be in the child’s best interest for the attorney for the child to encourage and assist the child in participating in the decision making process. “It is reasonable to anticipate that many young children who are initially unable to articulate a preference will be able to when provided with assistance.”

Child development studies show “that children’s capacities are constantly evolving, that young children may possess greater ability to formulate and express emotional reactions than was previously thought, and that even very young children may be able to provide information that is highly relevant to parental custody.” With that in mind, the attorneys for the child are in “a unique position to help children build the necessary bridges between known and new, it is imperative that we develop strategies to assist them in this endeavor.”

67 Id.
68 Id. at 175-176.
70 Id. at 843.
One suggested model is the Apprenticeship Model. “The Apprenticeship Model addresses [the] problem [with child silence] by applying information from the field of child development in order to guide lawyers in making their clients’ voices heard.”\textsuperscript{73} The first step the attorney for the child must take in helping the child bridge the gap is to “determine whether or not the child wishes to participate.”\textsuperscript{74} If the child is interested in participating, the attorney for the child should inquire about the child’s preference, if the child has a preference. The attorney for the child should inquire about the preference by asking direct questions.\textsuperscript{75} If the child expresses a preference, the attorney for the child should then ask the child to express the reasons behind his or her preference.\textsuperscript{76}

If the child has trouble expressing and/or articulating the reasons underlying his or her preference, the attorney for the child should inquire further, again by asking direct questions.\textsuperscript{77} “The lawyer may have to ask several questions before being able to determine whether or not the child has rational reasons for her choice, keeping in mind that a child may find articulating her reasons more difficult than the reasoning process itself.”\textsuperscript{78} The attorney for the child should strive to provide a structured process which seeks to “break down the overall decision into manageable segments.”\textsuperscript{79} “After working through the appropriate [segments] and considering a variety of both traditional and nontraditional alternatives, the child should be ready to formulate a preference. The lawyer’s role in this final stage is to support and assist.”\textsuperscript{80}

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\textsuperscript{73} Id. at 850.
\textsuperscript{74} Id. at 843.
\textsuperscript{75} Id. at 844.
\textsuperscript{76} Jessica Cherry, The Child As Apprentice: Enhancing the Child’s Ability to Participate in Custody Decisionmaking By Providing Scaffolding Instructions, 72 S. Cal. L. Rev. 811, 844 (1999).
\textsuperscript{77} Id.
\textsuperscript{78} Id. at 845.
\textsuperscript{79} Jessica Cherry, The Child As Apprentice: Enhancing the Child’s Ability to Participate in Custody Decisionmaking By Providing Scaffolding Instructions, 72 S. Cal. L. Rev. 811, 845 (1999).
\textsuperscript{80} Id. at 849.
Knowing the importance of assisting the child in formulating a preference and/or assisting the child in articulating the reasons for his or her preference, the interview is crucial to the representation of the child. By structuring the interviewing process in a way to maximize the child’s involvement, the attorney for the child may be able to further the weight afforded to the child’s preference. Research recognizes that “children are knowledgeable about their own needs and experiences.”\textsuperscript{81} That being said, the interview between the attorney and the child is critical to gaining important information from the child’s perspective.

Currently, according to Warshak, a clinical, research, consulting psychologist, and internationally renowned lecturer with authority on divorce, custody, and the psychology of alienated children,\textsuperscript{82} “[ ] most procedures for soliciting children’s preference do not reliably elicit information on their best interests and do not give children a meaningful voice in decision making.”\textsuperscript{83} “There are a number of studies that suggest children want to participate in the decision-making process and can provide both accurate and meaningful information.”\textsuperscript{84} These studies include Cashmore and Parkinson’s 2008 study which involved interviews of parents and children in Australian family law cases (Cashmore and Parkinson are law faculty at the University of Australia); Goodman and Melinder’s 2007 study; and Smith et al.’s study which interviewed children in New Zealand about active participation in decision-making.

Knowing that the children have a desire to participate, the attorney for the child should elicit the child’s preference and encourage their participation in the overall process. In a study by Smith et al. (2003) 103 children were interviewed between the ages of 7 and 19 in New Zealand

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\textsuperscript{82} www.warshak.com/author/index.html


\textsuperscript{84} Id.
regarding their active participation. The most common responses included “Let children have their say,” “listen to children,” and “tell children what is going on.” The reasons children expressed for wanting to participate included “wanting a say in the process, including the need to be acknowledged, the belief that their input would ensure better outcomes, and the perspective that they had a right to participate in arrangements that would affect them.”

Children under the age of twelve should be interviewed to assess their decision-making capacity. An interview conducted in chambers with only the judge and the child would afford an opportunity for assessment of the child’s individual decision-making. It would also be beneficial for the attorney to perform more of an assessment of the child’s individual capacities. “Traditional approaches assume that improvements in competence with age will translate into better decision-making across situations, but recent research suggests this is not necessarily the case.”

Interviewing Principles Based on Child Development Theories Established and Utilized Within the Legal Community

Based on the “diverse and expanding body of research with implications for the practice of interviewing children in cases of divorce and dissolution,” the following ten principles for

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86 Id.
87 Id.
88 Kathleen Nemechek, Child Preference In Custody Decisions: Where We Have Been, Where We Are Now, Where We Should Go, 83 Iowa L. Rev. 437, 467(1998).
interviewing children are suggested.\textsuperscript{90} If attorneys for the children take these principles into consideration, they may be able to obtain a more accurate understanding of the child’s preference.\textsuperscript{91} The first principle states that the interviewer should provide an age-appropriate, private environment with minimum distractions.\textsuperscript{92} Interviewers will want to remove intriguing objects that compete for a young child’s attention and are encouraged to conduct private interviews.\textsuperscript{93} “Private interviews are recommended to eliminate the appearance and reality of cross-contamination from others who may have a vested interest in the outcome.”\textsuperscript{94} (i.e. parents).

The second principle is to prepare children with age-appropriate explanations of the purpose of the interview, the child’s role, and the function of the professionals (i.e. the judge, the attorney for the child, etc.)\textsuperscript{95} Research suggests that “children knowledgeable about the legal system [are] less distressed about attending their dependency court hearing.”\textsuperscript{96} Creating an objective, non-judgmental atmosphere where a child’s perceptions can be explored and respected is the third principle.\textsuperscript{97} The attorney for the child should “demonstrate a willingness to hear all sides, without pressuring children.”\textsuperscript{98}

The fourth and fifth principles also deal with the atmosphere of the interview. The attorney for the child should make an effort to establish a rapport with the child through “non-suggestive means,” as well as promote a supportive, welcoming and non-threatening

\textsuperscript{91} Id. at 542.
\textsuperscript{92} Id. at 549.
\textsuperscript{93} Id. at 549-550.
\textsuperscript{94} Id. at 550.
\textsuperscript{95} Id.
\textsuperscript{96} Id. at 550-551.
\textsuperscript{97} Id. at 551.
\textsuperscript{98} Id.
environment for the child. This can be accomplished with the sixth principle which suggests the attorney for the child matches the “demands of the interview to the child’s stage of development” by using language and concepts the child will be able to understand.

The attorney for the child should also establish some rules and expectations with the child (the seventh principle). These rules and expectations should include “promoting accuracy, completeness, and honesty; giving permission to say ‘I don’t know;’ giving permission to say ‘I don’t understand;’ warning children about misleading questions; [and] telling children you don’t know what happened and cannot help them answer questions.” The eighth principle suggests that the interviewer engage the child(ren) in conversations on a wide range of topics connected to the decision-making process.

The attorney for the child should “elicit information regarding both advantages and disadvantages of various options, rather than condensing the task to a question of where children prefer to live.” This can be accomplished by using “general open-ended, non-leading questions that call for multi-word responses whenever possible.” In other words, the ninth principle invites the child to elaborate in their own words by discouraging close-ended questions. Finally, the interviewer should “avoid suggestive techniques that mislead, introduce bias, reinforce interviewer expectations, apply peer pressure, stereotype people, or invite children to pretend or speculate.”

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100 Id. at 552.
101 Id.
102 Id. at 554
103 Id.
104 Id.
105 Id. at 555.
By using these ten principles of interviewing the attorney for the child is “creating a useful process to obtain an accurate and truthful preference: ‘Open-ended questions elicit longer, more detailed, more accurate, and less self-contradictory responses from older children and adolescents than do the other types of interviewer utterances and are less likely to mislead younger children.”107 Although the use of these principles is likely to create a longer interview process, the benefits to the child will far outweigh the disadvantages.

CONCLUSION

The age of maturity is not concrete. Judges use their discretion when determining how much weight should be given to the child’s preference sometimes using age as a proxy for competence. They take many factors into account when making the judgment regarding the child’s interests; these include the child’s preference, the child’s position as presented by the attorney for the child, as well as other factors surrounding the best interest of the child. With the established research of the child development community among psychology experts, the courts and attorneys for the children should be informed as to how to evaluate children’s competence and employ interview techniques to advise children in expressing themselves.

As time passes and culture changes, children seem to be developing at different rates. The technologies and raised bar for school performance encourage children to mature at a much younger age. If this is true then should the age of preference/maturity be adjusted to actually reflect the child’s development? By better assessing the individual child, attorneys and judges can make a more knowledgeable determination with regards to how much weight to afford a child’s preference. There is a greater need for child development research to influence the interviewing and development of the child’s preference within custody determinations. By following the guidelines of either the apprenticeship model or the principles associated with

107 Id. at 548.
interviewing, the legal system can become more structured and consistent, creating accuracy in reporting and an increased understanding of the child’s preference.