

Advocacy for Young or Expectant Parents in Foster Care

by Lisa Pilnik and Laura Austen

A recent study by Chapin Hall of over 4,500 young or expectant parents in foster care in Illinois found that:

- Although most females received some prenatal care, more than one in five pregnancies involved either no prenatal care, or care that began during the third trimester.
- Twenty-two percent of mothers were investigated for child maltreatment and 11% had one or more of their children placed in foster care.
- Only 44% of females and 27% of males had received a high school diploma or GED.
- 86% of the youth were African American.
- Almost 25% of teen mothers in the study had two or more children.¹

Strengthening legal advocacy is one way to help address these challenges. Through its work on adolescent health issues,² the ABA is involved in trainings across the country on representing young or expectant parents in care. Some common questions practitioners face when advocating for these youth appear below. The answers can be helpful in your advocacy.

Q&A A teen mother or father is in foster care. Can the state automatically take custody of the teen's child simply because the parent is a ward of the state?³

No. A state can only take custody of a child if the statutory definition of abuse or neglect is met.⁴

United States Supreme Court cases dating to 1923 have held parents have a fundamental right to custody of their children and to make important decisions regarding their upbringing.⁵ In *Lassiter v. Department of Social Services*, the Court stated:

This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody and management of his

or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'⁶

If the state wishes to permanently sever a parent's rights to their child, it must afford that parent due process, and meet a standard of clear and convincing evidence.⁷

Although the Supreme Court has limited the constitutional rights of minors in some circumstances,⁸ it has never addressed the rights of teen parents, in part because no state has passed a law restricting the parental rights of minors based solely on age.⁹

Q&A Can the care provider of a youth in foster or residential care receive funding for the youth's child even if the child is not in state custody?

Yes. Title IV-E of the Social Security Act allows maintenance payments to be made for the child of a youth in foster care: "*Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts*

which are necessary to cover costs incurred on behalf of the child's son or daughter."¹⁰ (Emphasis added.)

Q&A What expenses should maintenance payments made on behalf of the youth's child cover?

These payments should be limited to funds for items listed in the definition of foster care maintenance payments.¹¹

"Foster care maintenance payments" are defined as "payments made on behalf of a child eligible for Title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers."¹²

The law also allows for reimbursement of local travel needed to provide the items above, and some administrative or operating costs for child care institutions.¹³

Q&A How can lawyers better serve teens in care who are parents or expectant parents?

Ensure the child welfare agency provides services the teen needs to parent successfully. These include:

- a supportive placement where the parent and child can live together (or visit frequently in the case of a noncustodial parent);
- prenatal and postnatal care for mother and child;
- health and nutrition education;
- mental health services, if necessary;
- gender and age-appropriate parenting classes and support groups;

- child care;
- transportation;
- education (Title IX of the Education Amendments of 1972 gives pregnant and parenting students the right to stay in their same schools);
- independent living services (i.e., planning for housing, school or job opportunities, and health care access).

Revisit the current placement and permanency goals often with the youth. Explore what other supports are needed to reach the placement and permanency goals. Some jurisdictions have found that a “shared responsibility plan” between the teen parent and her or his foster parents can help. (For an example, visit calswec.berkeley.edu/.../SB500_handout3_SharedResponsibility_plan_11_07_06.doc.)

Advise the youth that the child welfare agency may seek custody of the youth's child. Counsel the youth on steps to take to ensure he or she keeps custody of his or her child (or retains unsupervised visitation for a noncustodial parent). Such steps include obtaining prenatal care, attending parenting classes, and establishing proper child care while the youth attends school or work. Keep records of all steps the youth has taken to be an appropriate parent, including certificates for completing service programs. Also consider asking service providers to write letters sharing their positive observations of the client's parenting skills or to testify if the agency tries to obtain custody of the child.

Help your client handle related legal issues, such as paternity or child support, either directly or by helping the client obtain other low-cost or free legal services. For an unmarried teen father client, it is important that he establish his paternal rights as soon as possible to ensure he can continue his relationship with his child while the father is in foster

After Karen's client, Diane, became a mother at age 16, she and the baby continued to live together in Diane's foster home. Diane primarily took care of her baby, but often asked her foster parents to care for the baby when she went out with friends. Her foster parents complained to the child welfare agency that Diane sometimes came home late or didn't tell them where she was going when she was out. They also said that Diane had thrown a blanket on top of her child, which they thought showed carelessness, although the baby was not harmed.

The agency filed a petition for custody of the baby, claiming that Diane was not able to parent her child adequately. Karen represented Diane in a trial on the merits and argued that the allegations made by the agency were untrue or did not constitute harm to the baby. The judicial officer agreed that the allegations could not be sustained and the agency did not get custody of Diane's child. After the trial, Karen worked with the agency to ensure that as part of Diane's case plan in her own dependency case she was receiving all services she needed to be a better parent, including weekly visits from a parenting aide.

Looking back, Karen believes the foster parents were frustrated because they felt they had too much caretaking responsibility for Diane's baby, and the agency's involvement might have been avoided if Diane and her foster parents had agreed in advance how much they each would care for the baby. She also thinks Diane would have benefited from more services in her case plan aimed at supporting her as a parent. (See discussion, at left, of “shared responsibility plans” and services that can help teen parents.)

care and after he transitions out of care.

Q&A Can a lawyer represent a teen parent in her own dependency proceedings as well as representing the teen as a parent's attorney in proceedings about his or her child?

If the lawyer represents the teen under an expressed wishes representation model and is competent to represent parents in child welfare proceedings, then this dual representation is proper, and will likely benefit the client. However, if the lawyer acts as a guardian ad litem (GAL) under a substituted judgment model then the lawyer should not also represent the client as a parent's attorney. Since it is

foreseeable that the client's position as a parent may diverge from what the GAL believes is in his or her best interests as a youth in foster care, dual representation is inappropriate.

Q&A What basic principles should lawyers keep in mind when representing a teen parent in a child welfare proceeding?

The attorney should represent the child according to the American Bar Association's Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases.¹⁴

Lawyers must keep in mind the age of their client and use terms they can understand. The lawyer should ensure teen parents understand that even though they are in foster care,

they still have a right to be a parent and participate in all aspects of raising their children (or many aspects for a noncustodial parent). The lawyer should hold others working with the youth (social workers, foster parents) accountable in allowing the teen to participate in parenting his or her child. Documentation and testimony should be presented to the agency and the court on the teen's efforts to appropriately parent his or her child.

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Endnotes

¹ Dworsky, A. & J. DeCoursey. *Pregnant and Parenting Foster Youth: Their Needs, Their Experiences*. Chicago: Chapin Hall at the University of Chicago, 2009.

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³ In most instances, this article discusses federal statutes or Supreme Court case law regarding parents and the child welfare system. Consult your state law to determine if additional protections are given to parents generally or teen parents in foster care specifically. *See, e.g.*, California's recently enacted Protecting the Rights of Teen Parents in Foster Care legislation, AB 2483.

⁴ *See, e.g.*, *In re Hall*, 703 A.2d 717 (Pa. Super. Ct. 1997).

⁵ *Meyer v Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

⁶ *Lassiter v. Dep't of Social Servs. of Durham*

County, N.C.; 452 U.S. 18 (1981) (citing *Stanley v. Illinois*, 405 U.S. 645 (1972)).

⁷ *Santosky v. Kramer*, 455 U.S. 745 (1982).

⁸ *In re Gault*, 387 U.S. 1 (1967); *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503 (1969); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Parham v. J.R.*, 442 U.S. 584 (1979).

⁹ Buss, Emily. "The Parental Rights of Minors." *Buffalo Law Review* 48, 2000, 785.

¹⁰ 45 C.F.R. §1356.21(j).

¹¹ 45 C.F.R. §1356.21.

¹² 45 C.F.R. §1355.20.

¹³ *Ibid.*

¹⁴ Available at www.abanet.org/child/clp/ParentStds.pdf.

Interactive Web Site Details Lives of Immigrant Children

The Urban Institute has created an interactive resource exploring the lives of the nation's 16.4 million immigrant children, available at www.urban.org.

The Children of Immigrants Data Tool lets users generate detailed charts of the characteristics of children age 0 to 17 nationwide and for individual states and the District of Columbia. Statistics on 21 features include citizenship and the immigrant status (foreign vs. native-born) of children and their parents; children's race, ethnicity, and school enrollment; parents' education and English proficiency; and family composition, income, and work effort. The child and parents' citizenship and immigrant status (foreign vs. native-born) can be used as reference points for comparisons.

"More than one in five children in the United States has at least one immigrant parent. The tool is an essential resource for improving social policies that affect immigrant families and children," says Urban Institute researcher Karina Fortuny.

The data tool debuts at the same time as a companion report, *Children of Immigrants: National and State Characteristics*, which highlights key national data and variations across states.

The Urban Institute's Low-Income Working Families Project produced the data tool and report. The database will be updated as future data become available.



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