2019 LISTENING AND APPRECIATION TOUR

ABA Section of Litigation
Children’s Rights Litigation Committee

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The Tour: Fearless Lawyering for Children

The Children’s Rights Litigation Committee (CRLC) of the American Bar Association Section of Litigation conducted a Listening and Appreciation Tour in the spring and summer of 2019. Through this tour, we reached approximately 500 lawyers. The idea for this tour began after CRLC met with children’s lawyers in Louisville, KY, in conjunction with the Section of Litigation’s fall leadership meeting in October 2018. The 2019 Listening and Appreciation Tour had several goals:

- Convene local children’s lawyers to hear about access to justice for children in the community
- Energize and applaud children’s lawyers
- Share best practices to encourage zealous advocacy and help further the work for children in the area
- Follow up with materials and resources that are responsive to the needs identified

The tour had the following stops and almost all were hosted by a law firm that provided a reception and often provided space for trainings as well:

- **Wilmington, DE**, on February 27, 2019: The tour began in Delaware. CRLC convened a roundtable on education that focused on advancing access to justice for children in education matters in Delaware. Leaders who attended included judges, school leaders, state legislators, and children’s lawyers, who gathered to discuss legal representation of children in suspension/expulsion cases; engaging schools and nonlegal stakeholders to address school discipline issues; education issues for children involved in the juvenile justice system; and access to justice for children in truancy court. Leaders left with concrete action items to address these issues. Following the roundtable, CRLC hosted the 1.5-hour free CLE Program *Fearless Lawyering: How to Grow Pro Bono to Ensure Access to Justice*. Following the events, a reception was held for all attendees at Young Conaway Stargatt & Taylor, LLP, which hosted the events and reception.

- **Montpelier, VT**, on March 7, 2019: CRLC presented at a statewide conference for all Vermont dependency lawyers on issues involved in representing children, including the role of the lawyer, ethics, and how to provide zealous representation for child clients at all ages.

- **Omaha, NE**, on March 13, 2019: CRLC hosted a four-hour free CLE training for delinquency and dependency lawyers in Nebraska at Boys Town Headquarters. In addition to the lawyers who attended in person, the training was offered as a webinar around the state. This program included a youth keynote speaker, as well as a youth panel, in addition...
to three panel discussions. The day ended with a reception at the Boys Town Hall of History. Boys Town provided space for all of the events and the law firm Houghton Bradford Whitted hosted the reception.

➢ Montgomery, AL, on May 22, 2019: CRLC hosted a three-hour free CLE program for delinquency and dependency lawyers, which drew lawyers from around the state. Following the CLE program, CRLC hosted an education roundtable of education law leaders to discuss challenges and strategize ongoing work in the education arena. Lastly, CRLC hosted a CLE program on providing pro bono services in education cases. Following the events, a reception was held for all attendees. The Alabama State Bar provided space for the trainings and Bradley Arant Boult Cummings LLP hosted the reception.

➢ Salt Lake City, UT, on June 12, 2019: CRLC hosted a three-hour free CLE program for Utah delinquency lawyers as an in-person training, as well as a webinar offered to lawyers around the state. The training included a youth panel as well as a forensic exercise. The Scott Matheson Courthouse provided space for the training and the law firm Parsons Behle & Latimer hosted the reception that followed the training.

➢ Albuquerque, NM, on July 19, 2019: CRLC began the day in Albuquerque with a convening of leaders from around the state to share information and help kick off a year-long planning process to build an extended foster care system in New Mexico. Following the convening, CRLC attended a brown bag lunch for juvenile court judges, child welfare lawyers, and system stakeholders, hosted by the chief judge of the family court, in order to share about CRLC’s work and available resources. The day ended with a three-hour CLE training for New Mexico child welfare and juvenile justice lawyers that was offered as both an in-person training and a webinar for lawyers around the state. The Children Youth and Families Department provided space for the morning meeting and the Children’s Court provided space for the afternoon training.

![Roundtable on Extended Foster Care in Albuquerque, NM](image_url)
Lessons Learned from the Tour

Growing level of professionalism: Lawyering for children is a relatively young field. One of the biggest lessons from the tour is how much our field and the level of professionalism have grown. In every jurisdiction around the country that we visited, the Children’s Rights Litigation Committee met lawyers who are deeply committed to providing zealous and ethical representation to children, and we saw innovative work being done. This is encouraging and exciting and makes us hopeful for what the next 20 years will bring for both children’s lawyers and the young people they represent.

Need for a central office: The organization of practice varied in the states we visited. Some of the models we saw on the tour included:

- A statewide central office that had staff attorneys who represented a percentage of children, while contracting or partnering with outside lawyers to provide the remainder of the representation (one statewide office utilized pro bono lawyers in addition to staff and contract attorneys)
- Individual independent lawyers providing representation with no central office
- Statewide offices that employed all staff lawyers to provide representation to all children in the jurisdiction.

In addition, some states had nonprofit children’s law offices or law school clinics that provided additional representation to whichever primary model the state had chosen.

What we found universally is that legal representation of children is strengthened when there is a central office that connects lawyers, offers training, and provides supervision. Legal representation of children is incredibly complex, and we hinder the effectiveness of even the best lawyers when we do not provide them with the support of a central office. A central office that has staff attorneys (rather than an office that simply contracts or partners with individual lawyers) improves practice even more, allowing lawyers even more opportunities to recognize systemic issues that need to be addressed, collaborate to work together to improve representation, and ensure quality control. The children’s legal field also continues to build evidence that multi-disciplinary practice improves outcomes for clients and while possible within a variety of structures, it is easier within a central office to bring multi-disciplinary partners like social workers, peer mentors or education advocates onto our legal teams.

One example of a central office was in Utah where there is a statewide Office of Guardian ad litem (GAL) that employs 48 full-time lawyers. Though Utah has 8 judicial districts in a state that is both large and rural, the Office of the GAL has 15 offices that provide staff representation to every child in a child welfare case in Utah. By using this statewide staff model, this office is able to ensure low caseloads for lawyers as well as provide in-house training and quality supervision for every lawyer.

On the delinquency side, Delaware has the Office of Defense Services (ODS) with a strong juvenile division that has staff attorneys around the state to provide legal representation to all juveniles charged with a crime in Family Court, or charged with Contempt of a Truancy Order in the Justice of the Peace Courts. ODS employs full time juvenile defenders through its Public Defender’s Office (PDO) division, which represent the majority of youth in the state. ODS also contracts with defense attorneys through its Office of Conflicts Counsel division to provide representation in cases in which the PDO has a legally recognized conflict. Attorneys in both units are stationed in each county and are specially trained to represent juveniles.

As mentioned above, a central office allows more opportunity to recognize and address systemic issues. The ODS office recognized that their clients were struggling to reconnect to school after being released from detention, and so were able to hire two lawyers to focus on and address this issue.
In states that did not have a statewide central office, we saw more challenges for lawyers. In Alabama, lawyers addressed one of the challenges by forming a statewide listserv for lawyers representing children in juvenile justice and child welfare cases, as a way to connect to each other and provide a forum to share challenges and best practices as well as to provide mentorship opportunities for young lawyers.
Lessons Learned from Youth

“All of you who want to hear from us now on panels and at conferences about our experiences, we’ve been telling you our whole lives that the system is traumatizing us.”

—Speaker with lived experience in Albuquerque, NM

When the committee began more than 20 years ago, youth speakers were rare. In the years that have followed, youth speakers were sometimes invited to events, but generally just to tell their stories. Thankfully, as of 2019, there is a growing recognition that youth with lived expertise are partners whose input is critical to reforming systems and improving legal representation. Speakers with lived experience were a critical part of the tour, providing some of the most memorable and important parts of the trainings. For example, in a panel in Omaha, NE, focused on the role of the lawyer, the youth expert shared that had she understood lawyer-client confidentiality she would have shared more with her lawyer, especially about why she was running from placements (which was to protect herself). This comment helped highlight, in a way only a client could do, how important it is for lawyers to ensure their child clients understand confidentiality and privilege.

Youth panel in Omaha, NE

Youth speakers often offered concrete advice to lawyers, such as:

- Invest your time in your clients
- Get to know them and visit them regularly, not just before court
- Listen to your clients even if what they want is not what you think is best
- Care a little more, be welcoming, slow down
- Learn about your clients’ background and pain—understanding their trauma can help you tell their story
- Guide kids through the process; prepare your clients to come to court, otherwise “it’s just a field trip.”
Attendees at trainings were consistently urged by youth speakers to not give up on any kid! Speakers with lived expertise underscored this advice with other key lessons:

- It is critical for lawyers to look at a child’s behavior in the context of their trauma. Instead of seeing our client as a bad child, we need to see him or her as a child who is going through something difficult. Some speakers called this an empathy gap between lawyers and their child clients. One youth said he was labeled as “defiant and disobedient” and said had people been more understanding of him then he would have been more open. Another reported that her passion was sometimes mistaken for anger.

- While critical to look at our client’s behavior in the context of trauma, one youth speaker reminded the audience that, “there is so much more out there than my trauma. It is so important to share opportunities with youth, to let them know about possibilities” and to expose them to experiences beyond their trauma.

- Lawyers need to ask if clients are safe and, if a client is running, lawyers need to ask why they are running. Several youth speakers in different jurisdictions talked about how they ran to keep themselves safe but explained that their lawyers never understood that. One speaker described her lawyer as assuming she was having fun while she was on runaway status while she was instead being trafficked by a gang. Her lawyer never asked her if she was safe. A speaker in Utah noted that safety in placement is something that a lawyer with lawyer-client confidentiality is uniquely qualified to address.

- In many of the trainings, speakers talked about how it is the job of a lawyer to put his or her client in context for everyone else in the case. Lawyers need to know a client’s story in order to do that. Learn about your client’s background and pain. Understanding their trauma can help you tell their story.

- Courts get caught up in thinking they know what is best for kids and so sometimes do not listen to our clients. It is our job as lawyers to make sure that clients are heard. Youth are often in the system because they don’t have family support, so it is critical that youth have a checklist of exactly what to do. It can feel to youth that there is no way out of a situation—they do not see a light at the end of the tunnel—so having a concrete and reasonable list of tasks that will move a youth out of the system is extremely helpful.

- Family connections, especially sibling connections, are critical for kids in state custody. Siblings know what you have been through and are a human connection with family. One youth talked about her sisters who were the only relationships that were important to her. The department cut off those relationships so when she turned 18, she had no one. Youth speakers encouraged lawyers to think about visitation as not just with parents but also with extended family like siblings, nephews, nieces, cousins, and grandparents. One youth described how he had a family member die and he was not allowed to go to the funeral (nor had he been allowed to go to the hospital to see his family member before he died). Normalcy in visits are also helpful. Visits should not feel institutionalized but instead be held in more natural settings.

- Stability for child clients is also critical. Disruption and multiple moves really have a long-term impact on youth. One speaker from Omaha, NE, had been through 88 placements. In terms of its impact on school, one youth went to 14 different high schools. Another youth spent so little time in multiple homes during 15 months in foster care that she was never enrolled in a school. Lawyers must focus on stability for our child clients.

- There is nothing a child can do EVER that should result in solitary confinement.

- Lastly, speakers in many trainings discussed the need for youth to be able to fail. Failing and recovering are an essential part of growing into a resilient adult but our systems do not generally give our clients space to fail. One mistake can mean a disrupted placement or being sent to solitary confinement. Instead, lawyers need to advocate within systems and in court for clients to be able to fix mistakes rather than to suffer catastrophic results that harshly punish rather than to teach them needed lessons.
Youth panel in Albuquerque, NM
Challenges

In each stop on the tour, we discussed the challenges that children’s lawyers face. Some were universal, including a lack of services and placements for clients, while others were more unique, including some jurisdictions where lawyers are very disconnected from each other. Each training aimed to provide concrete suggestions for addressing those challenges to ensure that they did not interfere with zealous representation. Below are some of the challenges we heard about on the tour as well as ideas of how to address those challenges.

Unnecessary roadblocks to placement with family: The Interstate Compact on the Placement of Children is often a barrier to placing children with family across state borders and can cause long delays for children who must wait for family because of administrative hurdles. When we were in Louisville, KY, in the fall of 2018, we were on a high floor of the courthouse. Lawyers pointed out the window to show us that Ohio was within our line of sight, yet when their clients had family there, it could take months or even years to secure placement with that out-of-state family.

What is the lawyer’s role when representing very young children? In several jurisdictions we visited, child welfare lawyers are still grappling with their role and how to practically implement that role. For example, in Vermont, CRLC presented at a statewide training for Vermont dependency lawyers on the role of lawyers for very young children and adolescents. For representation of younger children, attendees grappled with tough questions like: How do I act as a lawyer for a preverbal client? How do I protect the infant’s or toddler’s legal interests, without substituting my own judgment for what should happen in the case? What are a young child’s legal interests in a dependence case? With regard to teens, lawyers noted challenges building rapport with their older clients, and engaging them in their cases. To address these concerns, CRLC trainers used a Practice and Policy Brief from the ABA Center on Children and the Law (Advocating for Very Young Children in Dependency Proceedings: Hallmarks of Effective Representation). There was specific focus on how to be “child centered” when the client is very young, including promoting appropriate opportunities for physical, social-emotional, and health development for infants and toddlers. Jean Koh Peter’s “Seven Questions to Keep us Honest” was a great resource for helping lawyers develop positions based on objective criteria, rather than their subjective views of what is best for the child. Finally, the training was rooted in the ABA’s Standards of Practice for Representing Children in Abuse and Neglect Proceedings. The Standards helped us think through how to solve challenging ethical issues, flesh out what it means to be a zealous advocate, and consider how caseloads and court schedules impact the quality of representation in child welfare cases.

The critical role of educational advocacy: In each jurisdiction that we visited, education was flagged as an area of significant need. Children need lawyers to assist with special education and school discipline cases, but in each state, there are just not enough lawyers representing children in education matters. In some jurisdictions, we discussed developing a pro bono panel to assist with education representation but that takes capacity in terms of training, identifying cases, and supervision of volunteers (for more information on pro bono programs to address educational needs, see Alabama Action Items).

Several jurisdictions flagged reintegration back into the school system after release from the juvenile justice system as an area of ongoing challenge. Delaware’s Division of Youth Rehabilitation Services has hired several transition specialists who work specifically on reconnecting youth to schools prior to release so that they can be quickly reintegrated. Since they hired these specialists, more kids have gone back to traditional school, rather than to an alternative school, though it remains a challenge to keep them in school. In addition, the public defender agency has two people who also work to help clients get reconnected to school. Everyone in Delaware agreed that more needed to be done to keep kids connected to traditional school but these were promising first steps.

One example of systemic advocacy to address the lack of individual representation came from Delaware, where the Office of the Child Advocate offers the Delaware Compassionate Schools Learning Collaborative, a compassionate schools training, which they have offered in many schools around the state. The training focuses on how trauma impacts brains and behaviors with the idea that the more schools understand, the better job they do in reacting to behavior that is the result of trauma. In the five years before the training was offered, kids in foster care were disciplined at twice the
rate of the general population. However, in the two years since the training was offered, that disproportionality has disappeared, and the only difference has been this compassionate schools training. This training grew out of the observations from a statewide central office that was able to spot this systemic issue and then build an effective response.

It is important to address lawyer burnout and secondary trauma: Lawyering for children is very challenging work. Working with clients who have experienced significant trauma can result in secondary trauma for lawyers. In addition, fighting against a system that sometimes re-traumatizes children can be overwhelming. We saw one way to address secondary trauma and compassion fatigue in Nebraska, which is using reflective practice as a resource for lawyers working in the child welfare system. Reflective practice is used by many professions to assist in confronting and dealing with trauma and crisis.

“The emotionally intrusive nature of the work often leads to high rates of vicarious trauma, stress and burnout—all of which affect the quality of services provided by an organization. Reflective practice assists in mitigating the effects of the emotionally intrusive nature of the work by helping individuals examine their current and past actions, emotions, experiences, and responses in order to evaluate their work performance and learn to improve in the future. Reflective practice promotes a workplace culture of collaboration and accountability.”
—The Nebraska Center on Reflective Practice (https://www.nebraskababies.com/ncrp)

As described by speakers, reflective practice involves taking into account your own experiences and opinions, gives you an opportunity to examine your own biases, and encourages and allows mindful self-regulation. Reflective practice also strengthens the connections between lawyers and both children and parents with whom they work and encourages lawyers to really see what is going on in a family, rather than seeing a situation through a biased lens. For example, with a renewed focus on prevention and keeping children at home (particularly as we implement Families First), our tolerance for risk will be tested a bit. Lawyers will need to ask themselves whether a child is really at risk or if it is only the perception of the lawyer. Reflective practice can be helpful in answering those questions. In addition, reflective
practice is also effective in addressing the secondary trauma that lawyers can experience. (See more in the section on the Nebraska training.)

“Instead of creating a system that helps children and youth, we’ve created a system that traumatizes them.”
—Youth with lived expertise in NM

Immediate Past ABA President Bob Carlson introduces the CLE training in Wilmington, DE

Gaps in the service continuum: In each jurisdiction that we visited, we saw that there are insufficient services to meet the needs of children and families. This is a real challenge for lawyers and their clients. One speaker lamented that instead of a plethora of ways to help a child thrive, we have to choose the least damaging option. It can also be difficult for individual or contract lawyers to zealously advocate for a client when a judge might not reappoint you if you fight too hard (this is another reason that a central office can be helpful; see Lessons Learned). Some of the ideas that speakers shared in addressing the lack of services were:

- It is critical that lawyers not rely on the department or probation for service options but instead that lawyers bring the right solutions to the problem. To do this, lawyers need to be talking to service providers, families, and youth to find out what is available and what is needed. Sometimes it can be helpful to convene a team of people for our clients, including providers, to brainstorm ideas.

- As states begin to implement Family First, they will need to list existing services, which might reveal gaps and be a good opportunity to advocate for needed services.

- Lawyers need to really look at programs and see what they are providing. For example, if a program only provides one hour of counseling a week, the lawyer should be asking why that can’t be done at home.

- Lawyers need to object to inappropriate placements for our child clients.

- Lawyers need to not just accept the status quo. Do not accept that a service does not exist. Push for more and be creative. Find the best for your kids (i.e., What would the lawyer look for if it was their own child?).
➢ If you see a broken systemic issue, contact the organizations that do systems work in your state or nationally, as they might be able to help with larger issues.

➢ Work together with other lawyers so that you all begin to advocate for services, even if they do not exist. If many lawyers are advocating, judges may eventually be inclined to order the creation of a needed service or placement.

➢ Remember that your child client is counting on you. You are that child’s advocate and you need to keep pushing.

**Overrepresentation of youth of color:** Overrepresentation of youth and families of color in the child welfare, juvenile justice, and education systems was an issue that we saw in every jurisdiction. One city we visited had achieved real change in lowering the overall number of youth involved in their juvenile justice system, but those improvements have not been equally extended to African American children. The day we visited, 79% of youth in detention in that city were African American (by comparison, African Americans are 30% of the city population). This city and the state are working to address disproportionality at arrest, which is the highest point of disparity, and also at the detention hearing where the decision to detain is made by a circuit judge. There are judicial guidelines on detention but those are often overridden. One youth speaker described that, as an African American male, it meant a lot to have a successful African American man as a mentor because he had previously felt that people had given up on him due to the color of his skin. Speakers also reminded lawyers to ensure that services are culturally competent given that such a high number of families involved in our systems are families of color. How lawyers can address disproportionality is a challenge that needs to be addressed.

*Panelists at the CLE training in Salt Lake City, UT*

*For more information about the Listening and Appreciation Tour or the Children’s Rights Litigation Committee, contact cathy.krebs@americanbar.org or visit ambar.org/crlc.*
Suspension/expulsion of children

For schools:

➢ At least 50% of all children in Delaware have at least one Adverse Childhood Experience (ACE) by the time they turn 18. We need to help schools understand trauma so that they view behavior through a compassionate lens, and schools and courts need to adopt practices that are trauma-informed.

  • RESOURCE: The Office of the Child Advocate offers a compassionate schools training, which they have offered in many schools around Delaware. Trauma impacts brains and behaviors. The more schools understand, the better job they do in reacting to behavior. In the last five years, kids in foster care were disciplined at the rate of two times the general population, and in last two years that disproportionality has disappeared, and the only difference has been this compassionate schools training.

    ▪ Delaware Compassionate Schools Learning Collaborative: [https://www.doe.k12.de.us/Page/3356](https://www.doe.k12.de.us/Page/3356)
    ▪ Child Traumatic Stress Network: [https://www.nctsn.org/](https://www.nctsn.org/)
    ▪ Additional resources: [https://www.doe.k12.de.us/Page/3313](https://www.doe.k12.de.us/Page/3313)

➢ Stop suspending kids to home. They need to be kept in school and programs should be created to engage them there. At the Brandywine School District, there was peer court and kids went to the YMCA or a community center if they were suspended so that they didn’t just end up at home or on the streets.

  • RESOURCE: Solutions, Not Suspensions

➢ Schools need to be transparent to the community in terms of the procedures and the impact on children.

➢ Courts and schools need to adopt restorative practice/collaborative problem solving to mend a relationship. Kids don’t know how to make things right after making a mistake—we need to teach them that skill.

  • CRLC committed to gathering information on restorative justice programs, including information on structure and funding as well as outcomes and impacts (resources available upon request).

➢ Schools need to send parents notice when considering suspension or expulsion of a student. Currently, some kids are being sent home with no documentation. Prior to a suspension or expulsion, schools also need to identify if a child has a disability.
For lawyers/advocates:

➢ Advocates can get a better understanding of what the discipline process is within a specific school. The process may not look like the requirements in the regulation but it is worth asking (without judgment) why a school has adopted a specific procedure.

➢ We need to analyze the data we have already.

➢ We need to provide legal representation for children who are being suspended and expelled.

  • Models for representation include:
    ▪ Law school clinics (e.g., https://www.law.duke.edu/childedlaw)
    ▪ Pro bono projects (e.g., https://lafchicago.wordpress.com/2017/08/30/back-to-school-at-the-ed-law-pro-bono-clinic)
    ▪ Legal services programs (e.g., https://www.lascinti.org/what-we-do/practice-groups/children-education)
    ▪ Fellowship lawyer who focuses on suspension and expulsion (e.g., https://www.equaljusticeworks.org/fellows/elizabeth-mcintyre)
    ▪ For additional ideas or technical assistance, contact the Children’s Rights Litigation Committee at cathy.krebs@americanbar.org.

  • Articles from the CRLC regarding access to justice in school discipline matters:
    ▪ Disrupting the School-to-Prison Pipeline
    ▪ Legal Care as a Tool to Improve Children’s Mental Health
    ▪ Representing Court-Involved Youth in Education Cases

For courts:

➢ There should be school reports at dependency hearings.


➢ Judge Chapman and Charles Madden, co-chairs of the Juvenile Justice Subcommittee of the Access to Justice Fairness Committee spoke about the work of their committee, which is starting with civil citations and looking for ways that courts and schools can work together to address the school-to-prison pipeline.

  • NCJFCJ School-Justice Partnership National Resource Center: https://schooljusticepartnership.org/
Action item:

Currently, the Department of Justice reports arrests to the schools so that schools can look into the charges. Four people at the meeting volunteered to look into this issue to determine whether the arrest reports could be narrowed right away. They will consider: What are the right filters for this information (for example should it be only violent offenses or perhaps those on school grounds)? How are the schools using this information? One outcome might be an MOU between schools and the DOJ on what is relevant and what information should continue to be shared.

Reintegration of children into the educational system once released from the juvenile justice system

Challenges:

➢ Communication issues between the school district, the Division of Youth Rehabilitation Services (YRS), and the family.

➢ Lack of oversight and central policy to coordinate re-entry.

Delaware resources:

➢ YRS has hired multiple school transition specialists.

• Since they hired a transition coordinator, more kids have gone back to traditional school rather than alternative. They do a 30/60/90-day check in, but after the 60-day check in there is a real drop off in how they are doing as kids start missing school, then sometimes they get rearrested.

➢ Office of Defense Services (ODS) hired two people to help on this issue.

➢ ODS has created new resources for parents to learn about their resources.

➢ Regulation for credit repair.

➢ New statute to allow the court to appoint an education decision maker in either Juvenile Justice or Child Welfare cases (that can help if there is a transition issue).

➢ Homeless foster care liaison can generate a report that gives a snapshot of where a child is in school, history of school placement, discipline history—real time data for education advocates.

➢ There are ways to be creative with funding. Office of Victims of Crime might even fund some of the work for support programs.

➢ There are time frames for when a superintendent may initiate an expulsion proceeding. The intent of the time frames is to make sure that expulsions are heard on a timely basis and not create a doubly punitive approach. [http://regulations.delaware.gov/AdminCode/title14/600/616.shtml#TopOfPage](http://regulations.delaware.gov/AdminCode/title14/600/616.shtml#TopOfPage)

A school district that is doing it well: Colonial School District

➢ Communication is essential to ensuring that the school, YRS, the child, and family are all on the same page. It is most helpful for the school district to develop relationships with the child and family; when there is a relationship with some trust, the child and family are more willing to accept the school district’s placement.
➢ Let the child speak at the meeting (this is critical).

➢ The school districts really need to work hard to find the right placement for each individual child. When the child is placed in the alternative school, it is on the same campus as the non-alternative school so that the child can take classes on each campus.

➢ What are the results? The school district found that integrating them into school keeps kids from being rearrested.

**Outstanding questions:**

➢ Collateral consequences of involvement in juvenile court and having a record are huge.

➢ What is the legal support that a child needs to overcome those collateral consequences?

➢ How do lawyers/advocates get a child back to their home school if they are placed in an alternative school?

**Action item:**

The MOU focused on reintegrating children from the juvenile justice system back to school was only signed by a few superintendents. Not sure it was really pushed out to all of the school districts and there has been lots of turnover of superintendents. The chief superintendent was present at the meeting and suggested that advocates attend a meeting of all superintendents to discuss the MOU. Two people signed up to follow up on that offer.

**Access to justice for children in truancy court**

**Overview of issue:**

There are 19 different school districts in Delaware but many different approaches to truancy and different levels of compliance to the code. There is sometimes a push from schools for the courts to be punitive, rather than taking a trauma-informed approach. There are approximately 1,200–1,300 truancy cases a year and children in these cases do not have a right to counsel, unless they are charged with contempt (which is a very small number of children each year).

**A school district that is doing it well: Colonial School District**

➢ Colonial looked at truancy systemically. Lots of times interventions take place too late (sometimes not until graduation). Parents are often really engaged when they are really young (pre-K) (they say “kids don’t drop out in high school, they drop out in elementary school”). They really work with staff and teachers to try to get them to understand Adverse Childhood Experiences. They started wellness centers in some schools. This is really helping them to see the invisible kids. There are family crisis therapists in all but one of their elementary schools as well as student based intervention teams. They look for predictors of negative success and focus on identification and support for students with disabilities. The school works with local service providers to meet the needs of their students. They focus on equity and on getting more teachers of color. Doing all this work has led to fewer truancy findings. They are seeing the wellness centers really take root. Discipline referrals went from 1,200 to 200. They’ve really seen academic growth.

➢ How do you address homelessness? Every kid in the district gets breakfast, lunch, and even dinner if they stay. They work to keep kids, not get rid of them. The school district built resources that can help with all kinds of things including connecting families to housing. Some of their staff visit the homeless hotels to build relationships.
➢ How do you fund? It is a priority that you have to fund. Every school has to have a wellness center by law in Delaware. Medicaid is propping these programs up and losing money. They involve private insurance as well and partner with community services. They are seeing parents be more engaged, which leads to fewer problems down the line. It is worth the money spent.

➢ We have to make our schools relevant. They have new middle school programs and attendance is skyrocketing. Truancy rates have dropped. In 2005, 41% of students were chronically absent in high school. In 2017, it was 22%.

National information on truancy:

➢ National statistics on access to justice:

• 31 states provide a right to counsel in truancy cases;
• 1 state has a discretionary right to counsel;
• 11 states provide a qualified right to counsel (including Delaware—there is a right to counsel but only when the child is facing contempt charges);
• 6 states do not have a judicial proceeding for truancy.


➢ Truancy Intervention Projects. Many of these use volunteer lawyers: https://truancyproject.org/index.php

CRLC presented at a statewide training for Vermont dependency lawyers on the role of lawyers for children in child welfare cases, with a particular focus on what legal representation should look like for two special groups of clients: very young children and adolescents. The focus on younger children allowed lawyers to think about tough questions like: How do I act as a lawyer for a preverbal client? How do I protect the infant’s or toddler’s legal interests without substituting my own judgment for what should happen in the case? What are a young child’s legal interests in a dependency case? With regard to teenagers, participants discussed the poor outcomes many youth leaving foster care face in school, employment, and health, and talked about how good advocacy in the later stages of a child welfare case can change those outcomes. The lawyers at the training were clearly engaged, thoughtful advocates for children with excellent ideas about how to improve representation for two important, vulnerable populations in child welfare cases.

Challenges identified in Vermont: Lawyers in Vermont identified several challenges facing children and their lawyers. First, the opioid crisis has led to an increase in young children, particularly newborns, in the child welfare system. The timelines for potential termination of parental rights in these cases are short, but the challenges parents with substance abuse issues face in addressing their addictions are huge. Sometimes lawyers for children feel like they can do nothing more than join in the state’s recommendations in the case because the children need permanency and parents are struggling. Furthermore, it can be a challenge to identify what an infant’s or toddler’s specific legal interests are in a case, and how to advocate for them.

With regard to teens, lawyers noted challenges building rapport with their older clients, and engaging them in their cases. Lawyers also noted frustration with the use of group care in Vermont. Too many teens are placed in facilities, rather than with families. To make matters worse, lawyers for teens often feel powerless to stop more restrictive placements because of a combination of bad practices and bad law preventing lawyers from objecting to changes in placement.

Best practices/tools for improving representation: With regard to representing very young children, the training used a Practice and Policy Brief from the ABA Center on Children and the Law (Advocating for Very Young Children in Dependency Proceedings: Hallmarks of Effective Representation). There was specific focus on how to be “child centered” when the client is very young, including promoting appropriate opportunities for physical, social-emotional, and health development for infants and toddlers. Jean Koh Peter’s “Seven Questions to Keep us Honest” was a great resource for helping lawyers develop positions based on objective criteria, rather than their subjective views of what is best for the child.

With regard to older youth, participants discussed the importance of the new federal focus on earlier transition planning (at age 14 instead of 16) and ways to take advantage of that planning process to get important services to children. Participants also discussed the importance of client engagement in the planning process, and how to help clients go from feeling powerless to powerful. Resources from the ABA Center on Children and the Law helped participants think about how to better engage their clients. Finally, the training was rooted in the ABA’s Standards of Practice for Representing Children in Abuse and Neglect Proceedings. The Standards helped us think through how to solve challenging ethical issues, flesh out what it means to be a zealous advocate, and consider how caseloads and court schedules impact the quality of representation in child welfare cases.
The training opened with a keynote address from a speaker with lived expertise in both the child welfare and juvenile justice system. She had been through 88 placements. She described one experience when she was about 11 years old when she was kept awake until after midnight because she was being moved to a new foster home. Once there, she was put in a dark room and told to go to sleep and then woken early and sent to school in the same clothes from the day before because no one had brought her belongings with her. She got in trouble for falling asleep in class and as a result she was sent to the principal’s office. While waiting to see the principal, the vice principal walked by and made a crack about her clothes being the same ones she had worn the day before. She yelled at him and as a result was arrested and charged with making terrorist threats. This keynote provided an opening and context for this training as well as a critical reminder of how essential it is to listen to children and youth as we consider how to provide zealous advocacy for our child clients.

Connecting with clients and understanding trauma: We talked a lot about trauma-informed care, and how it’s working in Nebraska.

Trauma is healed in the context of safe and stable relationships, which means treating the child and the parents together whenever possible. Medicaid pays for child-parent psychotherapy. Nebraskababies.com will tell you where to find therapists who can do that. The child is the client, meaning that services can be with biological and/or foster parents.

It is critical as lawyers that we look at a child’s behavior in the context of their trauma. Instead of seeing your clients as bad children, see them as children who are going through something difficult. One speaker noted that she sees a lot of lawyers who blame the youth for what is happening. Instead, it is critical to take a step back and ask what is happening.

For example, one speaker provided the example of a child who kept running from her home. The speaker was angry at the teen because of this behavior, but using reflective practice (outlined below), she was able to talk to her client about why she was running. It turned out that the client had been placed at home before she felt safe, so she kept running away. Once the lawyer understood why she was running, she was able to advocate appropriately. Another example was a 17-year-old boy who kept trying to start relationships with 13- or 14-year-olds. This behavior was troubling to those involved in the case, including his lawyer; however, once the advocate looked at it through her client’s lens, she realized that he was doing that because he related better to those younger kids than to kids his own age. Once that was understood, the advocate was able to work toward getting him ready to interact with people his own age. It is important to meet people where they are. When people, youth in particular, are overwhelmed with emotion, that is not a good time to give instruction, instead you need to validate and listen.

We should not put children into a system that mirrors the trauma they have experienced. Instead, let’s model authenticity and be kind to those we disagree with.

Reflective practice: Reflective practice is used in many professions to assist in confronting and dealing with trauma and crisis. Nebraska is using reflective practice as a resource for lawyers working in the child welfare system.

“The emotionally intrusive nature of the work often leads to high rates of vicarious trauma, stress and burnout—all of which affect the quality of services provided by an organization. Reflective practice assists in mitigating the effects of the emotionally intrusive nature of the work by helping individuals examine their current and past actions, emotions, experiences, and responses in order to evaluate their work performance and learn to improve in the future. Reflective practice promotes a workplace culture of collaboration and accountability.”
As described by speakers, reflective practice involves considering your own experiences and opinions, gives you an opportunity to examine your own biases, and encourages and allows mindful self-regulation. Reflective practice also strengthens the connections between lawyers and both children and parents with whom they work and encourages lawyers to really see what is going on in a family, rather than seeing a situation through a biased lens.

One way that reflective practice can assist lawyers is by assisting in confronting biases and opinions of whether a child is safe in a home. Nebraska social services is working hard to keep kids safely at home. With Families First and a focus on prevention, this will happen even more. By the time lawyers get involved it will be because something went wrong with voluntary services. As a result, lawyers will not see the success stories that do not make it into court. Our tolerance for risk will be tested a bit—we need to ask ourselves whether a child is really at risk or whether this is our own issue. This is a shift as a system and our lawyers need support in making this shift as well. Reflective practice can be helpful in terms of seeing a case clearly rather than through a biased lens.

**Disproportionality:** Disproportionality is a big challenge in all child serving systems but especially in the child welfare system. Native American Youth are 1.1% of the total population in Nebraska, but 4% of all foster youth (this does not include Tribal Courts). African American students are 8.8% of the population, but 15.9% of children in out-of-home placements, and 37% of African American children in child welfare system have been in place for 25 months. Twenty-five percent of Native Youth have been in care for 25 months or more.

**Role of the lawyer and quality of counsel:** “You have to know so much as a child’s lawyer, it is really a calling and is critical work.” In a child welfare case in Nebraska, the role of a GAL is a dual role: both a lawyer for the child and a GAL who advocates for the child’s best interest. GAL can bifurcate that role so that separate counsel can be appointed for the youth. Lawyers should have a caseload that makes it possible to fulfill the duties of a zealous advocate. If you can control your caseload, that can make a big difference in terms of developing relationships with your client. There was a study from Columbia about what kids wanted from their lawyers: number one was time (outcome of the case was far down the list). Some of the duties that are essential are meeting with the client soon after the appointment and ensuring that visits happen regularly and in the client’s placement.

For a delinquency or a status offense case, there are guidelines for lawyers on the Supreme Court website. These guidelines really should act as the base for representation, not the ceiling.

The youth speaker on the panel stated she did not know those standards even existed and hearing them she realized that she did not have adequate representation.

What is the most important standard for all lawyers for children? One panelist suggested that it is absolute loyalty to the juvenile client.

It is also critical to set the groundwork to explain your role to your client (for example, for a child welfare lawyer, what is best interest? What is express wishes?) and answer questions. That initial meeting is critical for establishing trust. Whether your client was heard is the most important thing to them. If that first meeting is short, then let them know you will set up another meeting soon thereafter and follow through—do not make promises you cannot keep. The youth speaker stated that had she understood lawyer-client confidentiality, she would have shared more with her lawyer, particularly about why she kept running away, which she was doing to protect herself, but her lawyer never understood that. It is critical to explain confidentiality and the exceptions.

Public defenders in Nebraska are county based, which means there is no statewide central system or training. Advocates have been working to change that as a central system can help with providing consistent training and supervision.
What children’s lawyers need to master: Becoming competent, being competent, and staying competent. How do you do this? Go to seminars, go to training, share resources with colleagues, create a “dummy file,” share research, share information on case law. It is also critical that lawyers see the whole client and better understand youth. Lawyers also need to communicate with each other when there are multiple lawyers (the youth speaker on the panel had four lawyers who did not speak to each other and she did not know who had what role).

Best advice for a new lawyer? Be professional and be prepared. You can’t know how the case will go, but you can control your own preparation. Remember that this is one of the most stressful times in a child’s life. Sit in and watch a court to learn how a judge works. Be nice to the bailiffs. Ask for advice—seek out mentors. Ask why we do things certain ways; it may not be the best thing for the client. Don’t be afraid to litigate. Ask whether your client needs and wants to be in court.

Youth expertise: A panel of youth with lived expertise in both the child welfare and juvenile justice system shared their expertise with the audience. One youth had no lawyer because his parents made too much money. He entered the system at age 13 and for three years he had no lawyer. He did not understand what was going on and would have made better decisions had he understood more. One youth had a lawyer who pushed her to accept a settlement that she did not understand. Her lawyer never asked for her opinion or thoughts. Another youth had a lawyer, but he didn’t spend any time with her talking about the case.

The youth all stated that they wanted to participate in their case but could not because they had no lawyer, or their lawyer acted as a barrier to involvement. One youth stated that once she was told that she was in charge of her journey, her life changed.

Youth had a lot of advice for lawyers. They advised getting to know your client, setting times to see them that are not just before court, and building a relationship with your client. They also flagged an empathy gap between lawyers and their child clients. One youth said he was labeled as “defiant and disobedient” and said had people been understanding of him then he would have been more open.

Youth were clear that every child should have a lawyer and that access to counsel should not be dependent on the parent’s salary. Youth should have strong access to a lawyer because they need assistance in understanding and presenting their case. Lawyers must zealously advocate for each client. For lawyers it is a job, but for youth it is their lives.

How can professionals keep families connected? Youth suggested that there should be more scheduled visits with the family. Don’t talk to parents without the child client, instead talk to children and parents together. Disrespect toward parents and families really shut down one of the youths. Visits should also include visits with siblings and visits with nephews, nieces, and cousins. Youth suggested that it would have felt more normal to be with family and extended family, not so institutionalized.

In terms of coming to court, hearing bad things can be traumatizing and so youth suggested that youth should decide whether to be in court. But youth reminded us that youth will definitely not be heard if they are not in the room.

It’s not about asking the right questions, it is about building that relationship and spending time and building trust—then your clients will tell you things. Visit more often and learn about facilities. Ask if your client is ok. Ask WHY your clients are running. One youth speaker ran from an abusive placement and tried to get caught right away because she didn’t want to be on the street. Once she was picked up she was kept in solitary confinement for three months, which exacerbated her trauma and made her situation much worse.

Youth speakers each agreed that there is nothing a child can do EVER that should result in solitary confinement.
We need to include people with lived experience in conversations with lawyers at seminars and conferences. We have to talk to our clients to hear what is going on in the system.

The youth panel was asked what they would do to improve the system. They responded:

- Create more and better placements (like Boys Town). In the juvenile justice system, more relationships are better. Shut down all detention facilities. They don’t help and they certainly provide no therapeutic help. One youth speaker did not reply “ok” when a staffer spoke to him and as a result, he got sent to his room for seven days with no mattress.
- Train foster parents better.
- Don’t give up on youth!

**Services**: There are not sufficient services to meet the needs of children and families. This is a real challenge for lawyers in Nebraska. There is a deficit of Spanish-speaking social workers and therapists and working through a translator for therapy is difficult. There is also a provider shortage generally, with 92% of Nebraska counties having a mental health provider shortage.

It is essential for lawyers to get out to a child’s placement as quickly as possible after their appointment to both see the placement and to find out exactly what services have already been offered. Lawyers need to get evidence about what services were offered and how they worked.

Tribes are very good at prioritizing families but ICWA is not always honored. It is important to ensure active efforts. Emphasis on in-home services and a clearing house of evidence-based services. The Department is required to develop a plan on how they will implement Families First—they have a draft up on their website. Part of that plan will be a list of services. That might help reveal gaps in services and present an opportunity to close those gaps by drawing down federal funds.

There are some provisions of Families First that might apply in a juvenile justice case—candidates for foster care might include those who have a juvenile justice charge that might instead be about an issue within a family. If IVE pays for a juvenile justice placement then there might be an argument that Families First applies. It also depends on how “candidate for foster care” is defined.

How do you identify the needs of your clients?

- Listen.
- The family are the experts on their own family. We need to listen to them and let them know that we hear them.
- Find out exactly what the status is across the board. If you don’t understand the whole picture, you can’t do a good job. Don’t speak lawyer.
- Cultivate informal supports for youth. Many families don’t have good support. Parent-peer mentors can be extremely helpful.
- Educational needs of a child often go unmet. Ask the question about educational needs. Do issue recognition—do they have a disability? Do they have an IEP? You should get a copy of it, it is relevant to your JJ and CW practice. Once you spot the issue, you can find out where to find help, it doesn’t have to be you.
How do we create a service plan for families that is doable and workable?

➢ Create a plan with them. What is it that you need? Plans must be individualized for the needs of their family.

➢ Lawyers need to be talking to service providers, families, and youth. Don't just accept the status quo. Don't accept, “No, that service does not exist.” Push for more. Be creative. Speak to those on the ground. Find the best for your clients.

➢ Start with the biggest fire. Teach concrete skills.
Our day in Montgomery began with a three-hour training for children’s lawyers in Alabama. Notes from the training are below.

Of all our clients, children are the least able to participate in their case. It is critical that lawyers provide zealous advocacy. We must remember that it should never be about the convenience or expediency of the court, it is about the client.

The speakers had some advice for lawyers representing children:

➢ Lawyers need to know the law, but you also have to know policy as well.

➢ There is value in having younger lawyers push on how things are normally done.

➢ It is obvious to the court when the lawyer has not met with a client. In the courtroom, be a lawyer.

➢ You have to stay on top of the neuroscience if you are going to represent children.

➢ You educate the judge every time you walk in the courtroom.

➢ It is helpful for children’s lawyers to be connected and help each other in this work.

➢ Children’s lawyers are susceptible to secondary trauma, it is very important as children’s lawyers that we take care of ourselves.

➢ If you see a broken systemic issue, contact the organizations that do systems work (for example, the Southern Poverty Law Center and Children’s Rights, Inc.). They might be able to help with larger issues.

As in so many jurisdictions, a lack of services was noted as a challenge, including a lack of efforts to identify family placements for our clients. One speaker lamented that instead of a plethora of ways to help a child thrive, we have to choose the least damaging option. It is critical that lawyers do not rely on the department for service options. Lawyers should bring their own solutions to the problem.

Youth speaker: The audience heard from a youth speaker who had been through 15 placements. She described how she often advocated for herself but noted that her passion was sometimes mistaken for anger. After she was removed from her mother’s custody, her brothers were the only family she had and it was incredibly important to her to maintain those connections. One of her brothers has a serious disability and she maintained her relationship with him through biweekly visits that she often had to advocate for on her own behalf, once going all the way to the head of the agency to demand that visits continue when they were suspended. This youth speaker described how her brother is connected to heart monitors for his condition and noted that when she arrives for her visits, her brother’s heartrate improves and stabilizes, providing powerful evidence of the impact of family connections and sibling visits.
Because of her brother’s disability, our youth speaker is passionate about youth with disabilities and encouraged lawyers to ensure that their connections to clients with disabilities is strong and that lawyers consider how they communicate with youth with disabilities.

She advised, “There is so much more out there than my trauma. It is so important to share opportunities with youth, to let them know about possibilities” and to expose them to experiences beyond their trauma.

Following the training, we held a roundtable on access to education with select stakeholders from around Alabama. Below are some notes and action items from that meeting.

Alabama has many school districts because of “breakaway school districts.” These districts split up resources. This system allows for more segregation and hurts rural areas, in particular. These breakaway school districts impact all the issues flagged below during the meeting. Alabama advocates are currently looking for a bill sponsor for legislation to slow down breakaway school districts.

Schools and law enforcement:

- School Resource Officers (SROs) are in most Alabama schools. Some schools have “police that are placed in the schools as a courtesy” and who don’t have to follow school rules.
- Some have advocated for eliminating SROs from schools completely, but the Governor’s Task Force (convened after school shootings around the country) recommended SROs in school.
- SROs may not know a child’s behavioral plan; their actions may exacerbate the child’s conduct.
- SROs in Alabama do not always have training (Alabama law defines an SRO as someone who has specialized training, but this is not always followed in practice). There is a pending bill that does address training and this is a potential area of advocacy.
- An area of potential advocacy is to focus on the parameters of the SROs presence in schools. For example, a recent law passed in New York required that schools enter Memorandum of Understandings (MOUs) with SROs and law enforcement in schools. The MOUs require that schools must retain all control on discipline. This is a potential idea for Alabama.

Disciplinary issues:

- Alabama has clear racial disparities in discipline and special education cases as well as in charter schools, vouchers, and placement in alternative schools. There are also racial disparities in discipline within magnet schools and alternative schools.
  - Schools do not always follow IEPs.
  - Youth placed in alternative schools do not always follow IEPs (Youth with IEPs were put on computers with someone there just to answer questions, not to instruct).
  - There are sometimes perfunctory manifestation reviews as part of the discipline process.
- Youth cannot be both gifted and have a disability in magnet school.
- Action item: Materials on due process rights for parents and kids across the state would be very useful.
➢ Action item: The Southern Poverty Law Center is working on a campaign to address issues such as reducing exclusionary discipline, improving school safety through alternative methods and improving data collection. They are hosting listening sessions and know your rights programs as well as developing resources for parents, students and advocates. They are looking for other groups to partner with on this campaign and are already working with faith communities.

➢ Action item: Discipline cases can be an easy way for pro bono lawyers to get involved and can be a way to involve private lawyers from around the state, and only involves about a half day of training. The presence of a lawyer in a case can make a big difference.

➢ Example of pro bono project that might be helpful:

  - Project out of Louisiana uses law students to do disciplinary hearings because you don’t need a law license. Perhaps invite the law schools in Alabama to get involved?

**McKinney Vento—**the education of youth experiencing homelessness:** While the State Education Department is doing good to work on McKinney Vento, there is some confusion by schools about the definition of homelessness. For example, if you are sleeping in your car you are homeless, but a school may decide that this does not make you homeless (this would be a violation of federal law).

A McKinney Vento case typically involves a school refusing to enroll a student who is experiencing homelessness in violation of federal law. Sometimes resolving these cases only involves a phone call to a school, however there is a question of how many cases slip through the cracks because a lawyer does not get involved. It is noteworthy that McKinney Vento cases can be good for pro bono lawyers because they are typically easy to resolve and you don’t have to leave your office, as you can do them from anywhere in the state. Training for pro bono lawyers could be done in about two hours.

**Other issues:** 504 Plans in Alabama have no state oversight, which means these plans are solely on paper, which results in inconsistencies and problems when children move school districts. Hopefully this will be solved by the adoption of an electronic statewide education database.

Transition planning to adulthood for children with more significant disabilities is not being done well as it seems schools see their job as solely graduating the child, not preparing the child on an IEP for post-graduation (like they would prepare another student for college). The youth are not being provided with community-based living and job exploration opportunities. Advocates need to push for varied employment opportunities, shadowing, internships, etc., in fields they are interested in before the youth graduates.

Schools in Alabama are incredibly segregated. (Indeed, the Alabama Constitution still provides for segregated schools despite being contrary to federal law.)

There is also a rural-urban divide that advocates are working to address through the Rural Economic Improvement Project (REIP) and ADAP Black Belt project.

**Truancy:**

➢ 30% of JJ system cases stem from truancy.

➢ There are not responsive truancy programs in Alabama. The programs that do exist often involve ineffectual and unnecessary finger wagging at parents. Particularly when some communities do not even have buses that transport kids to school.
Action item: There are successful truancy projects around the country to look to for examples. One is the Truancy Intervention Project in Atlanta: https://truancyproject.org/

**Potential for pro bono involvement:** There are not enough lawyers doing education advocacy in Alabama despite the many needs outlined above. We discussed pro bono projects as a way to expand access to counsel, though of course pro bono projects take time for full-time advocates in terms of recruiting lawyers, training them, connecting them with cases, supervising them, and then taking back the more complex cases. Below are some ideas to help begin to think about starting a pro bono project.

- Law student representation through law school clinics. Mississippi College and Bradley law firm recently started an Education Law Clinic, which provides an interesting model: https://law.mc.edu/academics/law-centers/family-childrens-law/education-law-clinic.

- Florida Pro Bono Matters—this is a statewide program in Florida. Most of the nonprofit organizations in the state feed into one website so that everyone can go into that one clearinghouse. You can customize it: if a program wants to attract law students, it can have a competition to see which law school sends the most volunteers. It sends text to volunteers when a certain type of case that they signed up for is available. A volunteer can specify the types of cases he or she wants and in which locations. The Florida Bar Association runs this project: www.FloridaProBonoMatters.org.

- Equip for Equality is a rigorous education pro bono project in Illinois that is very popular with volunteers: https://www.equipforequality.org/act/join-our-pro-bono-attorney-initiative/

- In Louisiana, there are a lot of issues in rural areas and a limited pool of attorneys. The state has a functioning pro bono program in rural areas, but attracting new attorneys is challenging. A group of attorneys covering 12 parishes in a rural area have become the case handlers; they take all the cases and became specialized after starting off taking pro bono cases. These lawyers now take these pro bono cases as part of their practice.

**Logistics:**

- A project could utilize pro bono lawyers by having them do intakes from their desk during a lunch hour to give out information to families.

- Trainings could all be online.

- The pro bono committee of the Alabama State Bar could be a potential partner.

Our day in Alabama concluded with Fearless Lawyering: How Pro Bono Services Can Ensure Educational Access for Alabama’s Children, which was a CLE program for private lawyers to begin the conversation about how private lawyers might assist in closing the gap in access to counsel for Alabama children and youth in education cases.
The Children’s Rights Litigation Committee hosted a training in Salt Lake City that was offered both in-person and as a webinar around the state for juvenile defenders. The focus of the training was the recently passed Indigent Defense Act Amendments (S.B. 32), which went into effect July 1, 2019. This training provided an overview of the new law, a youth panel, and a forensic exercise.

SB 32 requires the automatic appointment of counsel without regard to indigency. This law will ensure that youth have counsel at detention hearings and at post-disposition reviews. One panel focused on how lawyers can provide representation post-disposition.

Speakers talked about how kids are different. It is critical that you visit them where they are and establish rapport rather than meet with them five minutes before court.

Procedural justice is critical. Kids need to be heard and need to see that there is a way out. Youth are often in the system because they don’t have family support, so it is critical that they do not have a to-do list that is too heavy.

Kids of color and kids with disabilities are overrepresented in the system so it is important to ask if services are culturally competent.

Know the law and know your client. Before you go into court know what is going on.

Courts get caught up in thinking they know what is best for kids and so sometimes do not listen—it is our job as lawyers to make sure that they do.

Safety in placement is something that only a lawyer with lawyer-client confidentiality can address. It is crucial that lawyers really look at programs and see what they are providing. If a program only provides one hour of counseling a week, why can’t that be done at home?

The audience heard from a panel of youth with lived expertise in the juvenile justice system:

“I’m not what I did.”

One youth described the way his lawyer spoke to him as “legal jargon” that went over his head. One youth described how her lawyer assumed she was having fun when she was on the run, but she was being trafficked and was the property of a gang. What she needed was safety and her lawyer never once asked her if she was safe. One youth panelist wished that her lawyer had visited more and heard her story, instead of just meeting with her 20 minutes before court. It would have been helpful if her lawyer had come to her house. The result was that the person who advocated for her did not really know her. Lawyers must know what is going on in a client’s life in order to advocate.

The job of a lawyer is to put his or her client in context for everyone else in the case. You need to know a client’s story in order to do that. For example, one youth speaker laughed a lot when telling his story, even when describing serious and traumatic things. His lawyer needed to explain to the court that this is how he processes his trauma. It is not that he
Does not take his case seriously. This youth’s lawyer counseled him, helped him understand his options, and then let him choose. “I want your counseling to help me understand my options and to help me get to where I want to be.” Each youth speaker described a history of significant trauma and each described time on the street as being awful.

What was helpful for the youth who spoke to this training?

➢ One panelist described that as an African American male, having a successful African American man as a mentor meant a lot because people had given up on him because of the color of his skin.

➢ Having a checklist of exactly what to do. It can feel like you do not know how to get out of a situation—you do not see a light at the end of the tunnel—so having a concrete and reasonable list of things to do to move out of the system is extremely helpful.

Advice for lawyers from youth:


➢ Learn about your client’s background and pain. Understanding their trauma can help you tell their story.

➢ Believe in them and believe they can do it.
NEW MEXICO Action Items and Notes
Albuquerque, NM
July 19, 2019

The Children’s Rights Litigation Committee began the day in New Mexico with a roundtable on extended foster care. Below are the action items from that event.

Opportunities and action items for building an extended foster care system in New Mexico:

➢ Youth voice needs to be at the center of planning for an Extended Foster Care (EFC) system. Young people are more likely to be engaged with goals and the system if they are the drivers and help to put together a system that truly works for youth. New Mexico needs to create a structure for youth engagement in the planning process for EFC.
  • Action Item: Department should consider ways to hire youth staff to contribute to all stages of EFC planning and enactment.

➢ New Mexico needs to create lots of options for housing and supportive services. Services arrays will have to be adjusted to meet the needs of the transition-aged age set. Services also need to be available when kids need them and need to meet youth where they are. An EFC system needs to be able to work with every single youth, and all youth should be able to qualify for EFC. It’s about individual needs versus eligibility criteria. The new law has lots of flexibility to support these options.
  • All youth need to be able to fail—that is part of learning and growing up. The New Mexico EFC system can create and provide space for youth to fail, just as all youth need to do.
  • The federal government says that you can reevaluate IV-E eligibility at age 18, this should be done for every youth.
  • Youth can be better connected to benefits like SSI. If a youth has experienced trauma (which is likely most youth in foster care), then they probably meet the medical necessity requirement under EPSDT.
  • If youth are not using services, that means there is a problem with the services being offered. It does not mean that there is a problem with the youth.
  • Questions to ask when creating services and housing for EFC:
    • Is the timing of the service, right? Will help consistently come too late? Are there too many prerequisites to receive the service for it to be helpful?
    • Can youth reach this service? Can they physically reach it (transportation, geography)? Can they mentally reach it? Is it age-appropriate? Are they forced to “be humbled” before they can get the
help they need?

- Is this the right provider for this service?

➢ The vision of Extended Foster Care is guaranteed housing. New Mexico can and must be flexible on what that housing looks like. It can be a friend or a dorm room or even parents from whom the youth was removed. (The federal government allows all of those placements.) Housing needs to cover youth in the military, pregnant and parenting youth, and married youth. Housing stipends work anywhere in New Mexico (including tribal land) OR out of state. There is an opportunity here to be creative and that is essential to make EFC successful for all youth.

- It is important to work with service providers early so that needed housing is built and in place when extended foster care begins. Make sure they are included and involved during the year of planning.

- Housing navigators should be part of a system as they can think about the housing supply, what is needed, and how to connect youth to housing.

- People who are not traditional foster care parents and who do not need to meet licensing requirements can be recruited to provide host homes to youth in EFC.

- There has not been innovation or good thinking about how to provide foster care for teens, which means that New Mexico can be a leader in this area.

- What does foster care for teenagers really look like? (incorporation of transition-aged services and training required.)

➢ There is an opportunity for legal representation for youth in EFC, given court oversight, and court should be as youth-centered as possible so that youth want to participate in court. There is also a possibility for representation of youth on collateral issues based on the recent policy changes allowing IV-E funds to be used for reimbursement of legal representation (see https://familyjusticeinitiative.org/iv-e-funding/). In California, the counties with legal aid have been more successful with EFC than those counties without legal aid (95% of youth in counties with legal aid opted into EFC). Clearly, legal representation has an important role to place in EFC.

- It is critical that all needed court orders are in place by the time a youth turns 18. Judges and lawyers need to be educated about what needs to be in place so they can build a system that ensures that court orders are in place for each youth in foster care.

Following the roundtable on education, the Committee sponsored a training for children’s lawyers that was offered both in-person and as a webinar around the state. Below are the notes and action items from that training.

**Tips for finding creative solutions for our child clients:**

➢ We need to listen to our clients, do the work, and, as one youth speaker advised, “get on the ball.”
➢ Find other smarter, better, older lawyers to talk to. It can be helpful to work with someone in a different discipline.

➢ Connect with other lawyers through listservs, bar associations, or even informally.

➢ How do you advocate for a needed service or placement when it does not exist?

  • It’s a matter of starting to challenge and push the system.
  
  • People are being creative with wraparound services/wrap program. Bigger teams, getting everyone in the same room at the same time, to get everyone on the same page.
  
  • Object to an inappropriate placement. Sometimes you need to be stubborn and tenacious.
  
  • Work together with other lawyers so that you begin to collectively advocate for services, even if they do not exist. If many lawyers are advocating, judges may eventually be inclined to order the creation of a needed service or placement.
  
  • It can be a challenge to zealously advocate when a judge might not reappoint you if you fight too hard for your client. This is a real concern for contract or solo lawyers who are not part of an organization.
  
  • If it’s a really large and systemic gap of services or placements, reach out to organizations that do systemic work that might be able to do larger advocacy or even bring a lawsuit.
  
  • Remember that your child client is counting on you. You are that child’s advocate and you need to keep pushing.

➢ How do you represent kids who are dually involved in the juvenile justice and child welfare system?

  • Sometimes these kids are also victims. It’s critical to put the child client in context for everyone involved in the case.
  
  • Youth can often end up on the streets if they run from a placement. Once on the street, it is very easy for them to pick up delinquency charges.
  
  • Crossover youth raise logistical and confidential issues. Who notifies the lawyers that a client has picked up a charge? How does confidentiality impact the ability to notify? There is a working group looking at these issues.

Youth Expertise: We were honored to hear from youth with system involvement at the education roundtable, a brown bag lunch with judges and local stakeholders, and during the afternoon CLE training. Below are notes and tips combined from all those presentations.

“All of you who want to hear from us now on panels and at conferences about our experiences, we’ve been telling you our whole lives that the system is traumatizing us.”

Family connections, especially sibling connections, are critical for kids in state custody. Siblings know what you have been through and are a human connection with family. One youth talked about her sisters who were the only relationships that were important to her. The department cut off those relationships and so when she turned 18 she had on one. Connections with extended family, like grandparents, are important too. One youth described how he had a family member die and he was not allowed to go to the funeral (nor had he been allowed to go to the hospital to see his
family member before he died). Normalcy in visits would be helpful. Do not have stilted visits in a room, think of more creative ways to have visits.

Disruption and multiple moves really have a long-term impact on youth. In terms of its impact on school, one youth went to 14 different high schools. One youth spent so little time in homes during 15 months in foster care that she was never enrolled in a school.

In terms of legal representation, one youth described feeling completely alone. Lawyers need to talk in a way that clients understand. Lawyers need to prepare kids to come to court, otherwise “it’s just a field trip.” Listen to your client even if what they want is not what you think is best. Lawyers need to also flag important legal issues. One youth described how her lawyer did not flag her immigration status when she was in foster care, so no one applied for Special Immigrant Juvenile Status (SIJS). Now that she is an adult her immigration status is precarious (and she cannot afford to see a lawyer now). She is a mom of two kids but could be deported back to a country where she never remembers being. Lawyers do not need to be able to handle every type of issue that arises, but we should be able to identify the critical issues and secure outside assistance if we cannot represent a client on a given issue.

Youth described how the system does not have a human response to the kids it serves. Youth described how if they expressed their real feelings it had terrible consequences so they stopped. The result was that one youth said he did not know how to be a real kid. Because they were denied normal teen experiences, they take off to have freedom when they turn 18. If we want kids to access extended foster care we need to explain how it can help them because foster care from ages 16-18 is just a miserable experience that kids want to escape as soon as they can.

“Instead of creating a system that helps children and youth, we’ve created a system that traumatizes them.”

The youth speaker at the roundtable on extended foster care was in a group home when she turned 18. A transport was sent to pick her up and they dropped her off at a McDonald’s with nowhere else to go. She got a stipend, but no support. By the time she was 21, she was homeless with two kids and no one to call.

Youth expressed a desire to be around “my people,” people who were not paid to be around them. People who don’t have to have a college degree or pass a licensing requirement. One youth described how meaningful it was when his social worker let him spend time with his friend without a background check.

“We don’t need someone to tell us what to do, we need someone to help us figure it out.” Things are going to happen and you need support, not someone who tells you that you are stupid. Youth need the space to fail, just like all kids need to do in order to learn and grow.
Boys Town National Headquarters, host of the training in Omaha, NE