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School Expulsion: A Life Sentence?

By Sarah Biehl — March 15, 2011

Expelling a child from school and sentencing a child to life in prison without possibility of parole are two very different actions. They have different motivations and are vastly different deprivations of a child’s rights. They are, however, both serious actions that carry with them consequential and long-lasting effects on a child’s potential for “the full and harmonious development of his or her personality,” as well as a child’s rights to development, education, and an adequate standard of living as set out in the Convention on the Rights of the Child. Preamble, Art. 6, 27–29, Nov. 20, 1989. Both actions also signify a profound statement about the United States’ view of its obligation to ensure that children “should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular the spirit of peace, dignity, tolerance, freedom, equality and solidarity.” Id., Preamble.

The U.S. Supreme Court’s decision last year in Graham v. Florida, which prohibited life sentences without possibility of parole for juveniles in non-homicide cases, confirmed that, at least for life sentences, children’s rights and our collective obligations to children must not be lost or overrun as part of a quest to punish wrongdoing. The Graham decision is notable from a children's rights perspective because, like its predecessor, Roper v. Simmons, 543 U.S. 551 (2005), its focus on juvenile brain development as a justification for precluding life sentences shifts jurisprudential focus away from the horrendousness of the crime committed and toward the development and future potential of the child involved. See Graham v. Florida, 130 S.Ct. 2011, 2026–27 (2010). As the Court explained in Graham, the determination of whether a punishment is cruel and unusual by Eighth Amendment standards “requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.” Id. at 2026 (citing Roper, 543 U.S. at 568). The Court went on to explain that children are different from adults and should be treated differently because “parts of the brain involved in behavior control continue to mature through late adolescence.” Id. Thus, “[j]uveniles are more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably depraved characteristics.’” Id. (quoting Roper, 543 U.S. at 570).

The Graham holding and the social science-based data that motivated it create an interesting context from which to analyze the school discipline crisis that grips the United States. If life sentences without the possibility of parole for juveniles in non-homicide cases are clearly unconstitutional, and if what we now know and understand about the way children's brains develop justifies holding children not accountable in the same way as adults, then how can our legal and educational systems continue to justify the relative ease with which school
administrators expel children from school? The stakes and the legal analyses are different, but the consequences to children and to the nation as a whole are perhaps no less serious.

Since the 1970s, school suspension and expulsion rates in the United States have more than doubled to more than three million suspensions and over 97,000 expulsions in the year 2000. NAACP Legal Defense and Educational Fund, Dismantling the School to Prison Pipeline (October 2005). “Zero-tolerance” discipline policies have fueled the increase in recent years, as has the increasing reliance of school administrators and educators on law enforcement tactics to discipline children. See Advancement Project, Education on Lockdown: The Schoolhouse to Jailhouse Track (March 2005); American Civil Liberties Union, Dignity Denied: The Effect of “Zero Tolerance” Policies on Students’ Human Rights (Nov. 2008).

Recently, the news media has exposed the often outrageous consequences of zero tolerance and the heightened role of law enforcement in school that flows from these policies. This exposure highlights the policies’ absurd results. Examples include a six-year-old Cub Scout in Delaware who was suspended from school for bringing a camping utensil with a knife, fork, and spoon on it to school and a 12-year-old girl in Brooklyn, New York, who was arrested and hauled out of school in handcuffs for doodling on her desk. Though these stories bring fleeting attention to a misguided policy trend, they are but minor illustrations of a growing, monumental problem in our education system. Every day in the United States, hundreds and possibly even thousands of children are removed from school—for anywhere from a couple of days to a year or more—for offenses ranging from shouting in the hallway, talking back to a teacher, being “insubordinate,” getting into a fight with another student, or, in more serious situations, bringing alcohol, drugs, or weapons to campus.

The consequences of relying on removing children from school as a primary tactic to address misbehavior are nothing short of devastating. Prior suspension is more likely to cause a child to drop out of high school than any other factor, including low socioeconomic status, not living with both biological parents, a high number of school changes, and having sex before age 15. Suhyun Suh, Jingyo Suh, & Irene Houston, “Predictors of Categorical At-Risk High School Dropouts,” 85 Journal of Counseling and Development 196, 196–203 (Spring 2007). Students who are expelled from school—that is, removed from school for more than 10 days—are even less likely to graduate from high school.

The consequences of not graduating from high school, of course, are severe. Children who do not finish high school are 3.5 times more likely to be arrested as adults. Additionally, approximately 82 percent of the adult prison population is composed of high-school dropouts. Coalition for Juvenile Justice, Abandoned in the Back Row: New Lessons in Education and Delinquency Prevention (2001). Children who do not finish high school are much more likely than high-school graduates to be and remain unemployed and to earn less money if they do gain employment. Id. Additionally, school dropouts are much more likely to receive public assistance. See National Center for Education Statistics, Dropout Rates in the United States: 2000.
These trends are bad for the children and families who are directly affected by them, helping to further entrench intergenerational poverty and marginalization and effectively cutting off children’s hopes for successful futures as productive adults. They are also destructive for communities as a whole because large numbers of uneducated young people who are more likely to commit crime put all of us at a greater risk of becoming victims of crime, in addition to the fact that young people who are and remain unemployed do not build strong, self-sustainable communities as adults. Bob Herbert of the New York Times has reported that the number of “disconnected youth”—young people between the ages of 16 and 24 who are neither in school nor working—is at least four million nationwide and growing. Bob Herbert, “Out of Sight,” N.Y. Times, June 10, 2008. (Note that this article and the four million disconnected youth statistic were published in 2008, before the worst of the recent recession had hit families.)

Our broad, nationwide overreliance on exclusionary discipline policies is a national disaster. It is also only the tip of the iceberg. Exclusionary school discipline is only one of many factors that lead to children being “pushed out” of school. See Dignity in Schools Campaign, National Resolution for Ending School Pushout, December 2009. Unwelcoming school environments in many cities and communities treat students more like prisoners than children and, when combined with a lack of relevant or engaging curricula, inadequate resources and facilities, and failure to use effective prevention and intervention strategies for misbehavior, create a situation in which many children are almost destined to fail. Education, however, is not a fundamental right as set out in the Fourteenth Amendment. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 11–12 (1973). Thus, while students are due some level of due process before their right to an education can be taken away (see Goss v. Lopez, 419 U.S. 565 (1975)), it is essentially quite easy for school administrators to expel them from school, dooming many of them to a life of unemployment, crime, and little else.

Each state has a different statute addressing the procedure school administrators must follow to expel a child from school. All have a starting point in Goss v. Lopez, which holds that removing a child from school for more than 10 days requires something more than the minimal notice and explanation that is required when suspending a child from school for less than 10 days. 419 U.S. at 581–84. The process that is required for those longer exclusions of more than 10 days varies from state to state, but generally involves a hearing in front of the board of education at which the student has a right to an attorney (but not at public expense) and may present his or her case, but has limited access to evidence against him or her (few states have rules against admission of hearsay, for example, and schools often rely on evidence parents and students cannot access, like video surveillance footage) and little recourse to the rules of evidence to help make his or her case. The practical result is that boards of education rarely overturn a principal’s decision to expel a child from school, and, unless they have the resources or good fortune to attain an attorney, most children who have been proposed for expulsion from school are ultimately expelled.
So, given the extreme and likely consequences to children and communities that result from schools’ heavy reliance on school suspension and expulsion, why is it so easy to remove children from school? The considerations the Supreme Court enumerated in *Graham*—that children’s brains do not fully develop the ability to control behavior until later adolescence and that they therefore cannot be held accountable for their actions in the same manner as adults who commit similar acts—seem to apply equally well to the school expulsion scenario. Children who misbehave in school are largely not criminals. They are children. They misbehave. That misbehavior, especially when it endangers others, must be addressed. But it should be addressed appropriately, with a focus on preserving every child’s dignity and right to an education, because although children who get into a fight at school have done something much less onerous than children who commit the horrific crimes that motivated the *Graham* case, the reality is that the consequences for these two groups of children are both devastating.

Children who do not finish school are essentially doomed to a life sentence of crime and unemployment. Children in prison are denied any opportunity to participate in life outside prison walls. School dropouts are ostensibly free to roam the streets, but are cut off from access to the ladder to success in U.S. society and are more likely to end up in prison and in unemployment lines. Their futures are functionally as bleak as their incarcerated counterparts.

The costs to communities and the country as a whole are equally great. Draconian school discipline policies are condemning an entire generation of young people. Losing the right and/or ability to complete their educations is a serious deprivation of children’s rights. It is not equivalent to depriving a child of his or her right to liberty and right to be free from cruel and unusual punishment, but surely it is serious enough to merit more than a sham due-process procedure that ultimately puts children’s futures in the hands of overzealous school administrators who have almost unfettered discretion to decide whether a child should be expelled from school. The right to education is a human right that should not be taken away from students unless states “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity.” Convention on the Rights of the Child, Art. 28 (Nov. 20, 1989). This is not the reality for thousands of children in the United States. This reality alone should serve as a basis for developing school discipline policies that respect children’s dignity and preserve their right to an education, reserving suspension and expulsion only for the most serious, dangerous situations.

There are some concrete things that lawyers who care about children’s rights can do to help. First, lawyers need to advocate, as the ABA has already suggested, for the abolishment of state, local, and school district-level zero-tolerance policies. See American Bar Association, Resolution Concerning School Discipline (2001). Second, lawyers can help ensure that low-income children and families facing school expulsion have legal representation by taking such cases for little or no cost and/or by supporting legal aid programs and other nonprofits that provide such representation for free. Anecdotal evidence nationally shows that legal representation in school expulsion cases greatly increases the likelihood that an individual child will avoid expulsion.
Finally, and most importantly, lawyers can help support local movements to shift school district policies away from a focus on suspension and expulsion as the primary means of school discipline.

There are some great examples from all over the country of lawyers working in cooperation with community-based organizations and local parent and student-led groups to advocate for needed change. The Advancement Project, for example, is a Washington, D.C.-based civil rights organization that worked with Padres & Jóvenes Unidos, a Denver, Colorado-based parent and youth organizing group, to implement changes to the Denver Public Schools student code of conduct, reducing suspensions, expulsions, and school-based arrests. See Padres & Jóvenes Unidos, Ending the School to Jail Track. It is often difficult for attorneys to take a back seat, but school policies are and should be a community concern, and community-based and community-directed actions have proven to be the most effective means of achieving meaningful policy change. Children’s rights lawyers, especially, can provide needed leadership, guidance, and support because they understand the stakes. The parallels between children who have been sentenced to draconian prison sentences and children who lose the right to complete their educations are stark, and the consequences of failing our children are terrifying. We can and must do better.

**Keywords:** litigation, children's rights, expulsion, suspension, zero tolerance, pushout

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**Preparing Foster Youth for Adulthood**

By Rachel Kleinberg and Patsy Moore — March 15, 2011

Approximately 20,000 youth “age out” of the foster-care system each year nationally. Foster Care Independence Act of 1999, 31 U.S.C. & 42 U.S. These are youth who, because of allegations of abuse or neglect, have been separated from their families for their protection and for whom no permanent plan was successfully implemented. Although the goal of the foster-care system is to reunify youth with their parents, when children cannot be safely reunified, permanence through adoption or legal guardianship becomes the goal. Unfortunately, there are still far too many youth for whom the promise of permanence is not realized. Youth still in long-term foster care at the age of majority—18, 19, or 20, depending on jurisdiction—who then age out of foster care face significant challenges as they transition into adulthood.

By definition, youth in foster care have experienced some sort of trauma, generally through abuse, abandonment, or neglect by their parents. In addition, the experience of foster care itself can be traumatizing to youth, as they must cope with frequent moves, changing schools, and, often, ongoing disappointment from remaining in out-of-home care. Older youth are more likely to live in group homes or institutions—the least “family-like” settings.” Mark Courtney, “The

- More than one fifth of former foster youths experienced homelessness for one day or more within a year of aging out, compared to the national statistic of 1 percent per year.
- Over 50 percent of foster-care alumni have at least one mental-health diagnosis; 25 percent are diagnosed with post-traumatic stress disorder.
- Foster-care alumni obtain a GED instead of a high-school diploma at nearly six times the rate of the general population; less than 2 percent of former foster youth complete a bachelor’s degree.
- The employment rate among alumni who are eligible to work is 80 percent, compared to the national average of 95 percent; the rate of former foster youth receiving cash aid is five times higher than the national average.

Casey Family Programs, Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study (2005).

Additionally, youth who never reunify with their families are unlikely to have a mentor or any long-term adult connection. Youth who fall on hard times have no safety net and no financial or emotional support.

The Safety Net
Title IV-E of the Social Security Act enables each state to provide foster care and transitional independent living programs for children in out-of-home care. 42 U.S.C. Section 670. In 1999, Title IV-E was amended to include the John Chafee Foster Care Independence Act. This act provided funding to states to assist youth in making the transition from foster care to independent living. The act encourages and funds programs that offer youth in out-of-home care educational opportunities, vocational and employment training, training in daily living skills, substance-abuse prevention, preventative-health activities, and connections with mentors or “dedicated adults.” The act also provides services and support for youth between the ages of 18 and 21 who have transitioned out of the foster care and probation systems. The act’s stated purpose is to “provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients . . . to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood.”

Currently, funding for this independent living program is $140 million per year. Government
Accountability Office, HHS Actions Could Improve Coordination of Services and Monitoring of States’ Independent Living Programs (2004).

Funding is distributed to states based on their share of the national foster-care population. States must provide a 20 percent match to be eligible for the funds. Under the act, states are required to use some portion of their funds for assistance and services for older youth who have left care. States are also permitted to use up to 30 percent of their funds for room and board for youth between the ages of 18 and 21. The act also permits states to expand Medicaid coverage to former foster youth between the ages of 18 and 21. Cash aid is made available to youth attending post-secondary school. Each state is given discretion over how to use its funds. As such, services provided to foster youth vary widely from jurisdiction to jurisdiction. To receive funding, states are required to present a multiyear plan describing the design and implementation of programs in accordance with the act, as well as annual reports describing services provided to youth. These plans and reports are submitted to the Department of Health and Human Services, which oversees these funds.

To effectively advocate for services for youth in your jurisdiction, it is important to be familiar with the plan enumerating what services are available, as well as any additional regulations enacted by the states that dictate how funds are to be spent. For example, in California, these funds are overseen by the Department of Social Services, which publishes a Manual of Policies and Procedures. Section 31 of this manual details the eligibility requirements, the services available, and a framework under which the individual counties are to provide transitional services to youth. Additional funding sources may also tie programs to different regulations. For example, transitional housing may be funded by the U.S. Department of Housing and Urban Development, which promulgates regulations. It is through these regulations that states can be held accountable for providing services to transitioning youth in accordance with federal law.

More recently, the Federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) amends Sections B and E of Title IV of the Social Security Act, making it possible for states to significantly strengthen the safety net. For states choosing to opt into the program by enacting enabling legislation, Title IVE foster care funds can be claimed for young people up to age 21 who meet one of five criteria. States have the option to extend foster care and adoption assistance programs to any child up to age 21 if the individual is:

- completing secondary education or earning an equivalent credential,
- enrolled in an institution that provides post-secondary or vocational education,
- participating in a program to promote or remove barriers to employment,
- employed for at least 80 hours per month, or
- incapable of doing these activities due to a medical condition.
For older youth and their advocates, aside from the obvious benefit of financial support until age 21, perhaps the most exciting piece of Fostering Connections relates to the creation of the supervised independent-living placement (SILP) category and the ability of the agency to designate the youth as his or her own payee. Fostering Connections recognizes that the restrictions placed on young people living in congregate care and even in traditional foster homes unintentionally prevent them from gaining the necessary experiences to prepare them for adulthood. SILP allows youth to receive financial support, court oversight, and continued social services support while living independently in college housing, an apartment, or shared housing. By providing young adults with increasing levels of both responsibility and independence, Fostering Connections creates real-life opportunities for youth to learn decision-making skills and gain experience in everything from grocery shopping to dating to maintaining employment. It does so, however, while still providing the space all young people need to learn from their mistakes.

Fostering Connections also promotes family connections for children by providing federal support to states for the Guardianship Assistance Program (GAP) and identifying and notifying relatives that a child has been removed from his or her parent’s home. This provision will allow more older youth to find much-needed permanence and stability with family members who might have otherwise been unable to care for them.

**Best Practices**

All adolescents face challenges as they become adults, learning how to cope with the requirements of jobs or school, living on their own, and becoming their own person. However, most young adults have parents or family members that have taught them over their lifetime, preparing them to spread their wings and go on their own. Once these youth reach adulthood, they still rely on parents and family for advice and as a safety net when they hit a bump in the road.

Foster youth typically grow up without opportunities to take essential steps toward gaining independence and developing the skills necessary to be a responsible, productive adult. The sobering statistics noted above demand that social workers, lawyers, court-appointed special advocates (CASA), and others charged with serving foster children ensure that all youth receive more complete services to assist them in the move into adulthood and in standing on their own.

According to Sarah Geenen, Ph.D., and Laurie Powers, Ph.D, authors of *Transition Planning for Foster Youth with Disabilities: Are We Falling Short?*, and Pew Charitable Trusts’s *Time for Reform: Aging Out and On Their Own* (2007), the most effective practices for transitional programs include the following.

Appoint and train educational surrogates and assist youth in obtaining a standard diploma rather than a modified diploma. Because foster youth move or transfer schools more often than other students, schools often channel them into alternative programs with modified diplomas that may present problems with employment or higher education. Pushing schools to provide the needed
services to foster youth requires determination and training regarding the available programs and funding. It also requires consistent educational surrogates who can hold education rights for the youth whose parents are unable to do so. These surrogates should follow the youth if he or she changes schools to ensure the youngster receives credit for work at prior schools and continuity of services.

Train professionals from a youth-directed perspective. Organizations such as California Youth Connections partner with schools of social work, child-welfare organizations, the judicatory, CASA and legal-services providers to share their experiences as part of a comprehensive training model.

Involve youth in making their transition plan; make it individualized and youth centered. Develop an individualized plan for each youth, rather than filling in a boilerplate plan. The plan should include not only broad goals, but also specific action steps for the youth and service providers, including timelines and measurable outcomes. The plan should identify a responsible adult other than the youth to monitor progress and ensure services are available to the youth.

Coordinate transition planning between agencies, including social services, special education and transition programs. Too often, each agency makes its own transition plan for a youth with no involvement from other professionals working with the youth. This leaves the youth pointed in different directions, duplicates some services, and fails to provide an individualized plan for that youth. If a youth has an individual education plan through his or her school district or any other agency, the goals in that plan should mirror the goals created by the Department of Social Services. Plans should be updated regularly to ensure that the goals set forth are both current and comprehensive.

Training should center on self-determination, self-advocacy, and independent living. The Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24 found that, looking back, only one quarter of the young people surveyed reported that they felt “very” prepared to be self-sufficient when they exited foster care and nearly one third reported that they felt “not very” or “not at all” prepared. Independent-living skills training for foster youth should include how to set goals and make plans to reach those goals, how to identify and access services, and how to advocate for themselves. Additionally, youth need to learn basic life skills such as preparing a résumé, completing a job application or apartment application, employment and interview skills, planning a budget, understanding credit and credit scores, and opening a bank account. Courtney, M., et al, Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 23 and 24, Chapin Hall at the University of Chicago (2010).

Foster youth should have access to and education regarding reproductive health and family planning. It is well documented that foster youth experience consensual sex at an earlier age than their non-foster youth peers and are at much higher risk for becoming pregnant. The Midwest Evaluation found that foster youth first experienced sexual intercourse at age 16 compared to age
17 in the general population, that 77 percent of female former foster youth compared to 40 percent of their non-foster youth peers had experienced at least one pregnancy, and 61 percent compared to 28 percent of the males reported fathering at least one child. The responsibilities of parenthood at a young age add to the already overwhelming challenges to successful independence already faced by former foster youth.

Foster youth should receive comprehensive education regarding reproductive health, sexually transmitted diseases and infections, HIV, family planning, and where to access necessary medical services including birth control, prenatal care, and other related medical and mental-health services.

Person-centered career planning and work experience should be tailored to the youth’s career interests. Focusing on the direction the youth wants to take in his or her career allows the youth to have a voice in his or her future and will likely bring more involvement from the youth. Too often, programs have a one-size-fits-all approach that does not work for many young adults. Foster youth rarely have the opportunity to obtain summer internships or part-time employment—both of which provide valuable job skills and preparation for successful entry into the workforce.

Participation in extracurricular activities and general education is important. Foster youth may not have had the benefit of involvement in sports, drama, music, or other positive extracurricular activities. As a result, when they become adults, they have not developed interests in healthy or creative pursuits and may end up getting involved with drugs and alcohol or other unhealthy activities as their main entertainment. Working with youth to develop hobbies and interests while in foster care, or just introducing them to new activities, may be the bridge to a lifetime of positive interactions.

Young adults need a strong connection to a caring adult that they can call on when a problem or question arises or simply to share the day’s news. Foster youth often do not have the lifelong connection that families provide and may need assistance to develop such resources. A youth who has aged out may not know how to fill out a job application or a tax return; simply having someone to call can alleviate a significant amount of stress for a young adult. Even more significantly, a permanent connection can give a former foster youth a place to eat dinner during the holiday season or a place to call home during school vacations when college dorms are often closed. When seeking out mentors, all avenues should be explored, including formal mentoring programs along with teachers, community members, and the family of origin.

Each youth will have different needs for support as he or she transitions to adulthood. One youth may need assistance to obtain financial aid for college; another may need assistance to obtain the deposit for a first apartment or for transportation funds to get to work until he or she begins to receive regular income. Those individual needs should be assessed, and a plan should be developed with the youth’s input. Financial assistance should not come in the form of a reimbursement for expenses, as the youth will often not be able to put forth money initially.
Additionally, emergency funds should be available for youth who need temporary shelter or food.

Once youth emancipate from foster care, they often seek out their biological family with idealized visions of the assistance they can provide. A 2008–2009 study of over 700 former foster youth found that “21 percent of the young adults [interviewed] were living with their biological parents or other relatives.” Courtney, M., et al, Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 23 and 24. Chapin Hall at the University of Chicago (2010). Similarly, 81 percent of the 23- and 24-year-olds interviewed in the Midwest Evaluation reported having at least weekly contact with a member of the biological family. As a youth begins transition planning, it may benefit him or her to include family members in that planning so that the youth has a realistic picture of his or her family’s ability or desire to provide assistance. Even when the youth’s family cannot provide financial assistance or housing, it may be possible to help the youth and the family identify what they can provide. Something as simple as a connection to family members who can share special occasions or offer moral support and advice can make a world of difference to a young person who is completely alone.

In every case, service professionals need to have higher expectations for themselves, the youth with whom they work, and other service providers. Too often, we expect minimal participation and achievement from foster youth, and they live up to our expectations. Conversely, when everyone expects more from young adults, they often rise to those expectations, surprising even themselves with what they can accomplish. Social workers and attorneys need to be held to the same standard; every decision we make on behalf of our clients is potentially life-changing and should be treated as such.

Youth who age out of foster care should have access to other former foster youth. Former foster youth can act as youth advocates for those newly out of care, connecting them with the services and support they need. Additionally, these peer-to-peer connections can provide the youth with support from an individual who has been in the same position and understands the hardships that he or she may be facing as he or she enters the world of adulthood.

Putting these practices into place at every level will provide better outcomes for the youth we serve and may even allow them to realize the unspoken promise of a better life than when they were first brought into the foster-care system. Preparing their child to go out into the world ready to “grab the brass ring” is every parent’s responsibility and one that the child-welfare system has a moral and ethical duty to embrace.

**Keywords:** litigation, children's rights, transitioning youth, foster care, aging out

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Addressing the Health Needs of Court-Involved Youth

By Eva J. Klain — March 15, 2011

For attorneys, judges, and other legal professionals to effectively promote adolescent health, they must understand the various disciplines that may have contact with youth or otherwise affect policy or practice regarding adolescents. They need to understand the collaboration needed to comprehensively address adolescent health issues. It is with these needs in mind that the ABA Center on Children and the Law has for almost 15 years worked through the federally funded Partners in Program Planning for Adolescent Health (PIPPAH) initiative to educate lawyers about the health needs of children and youth in the court system.

The PIPPAH project provides an opportunity for those who serve youth and their families to maintain a multidisciplinary and interdisciplinary approach to planning, policy, and practice issues related to adolescent health and well-being. In addition, the project provides an opportunity for attorneys to learn about positive youth development and how they, as advocates, can positively impact the health of their clients.

Too often, legal professionals only come into contact with youth when they are involved in some type of court action, whether before a judge for delinquency or a status-offense case or as respondents in child-welfare/dependency cases. When youth come into family and juvenile courts, their health needs are not commonly viewed as central to their legal cases. When health is a dominant issue, a youth’s legal and social service team may focus on a single diagnosed problem to the exclusion of other physical and mental health needs. Judges and lawyers are trained to identify legal, rather than medical, issues.

Lawyers can therefore benefit greatly from exposure to the positive youth development perspective, which highlights children’s talents, strengths, and future potential rather than their shortcomings. As Shay Bilchik, founder and director of the Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute has stressed, “We have a responsibility to make sure our families and communities are ones that can actually support adolescent development in a healthy way.” PIPPAH, Creating Healthy Opportunities: Conversations with Adolescent Health Experts at 6.

Furthermore, a focus on positive youth development within the legal community can dispel the myth that youth in state care are not capable of being successful and productive citizens. Based on research, practitioners have identified what keeps most young people on the right track: a sense of competence (the ability to do something well, such as mastering job skills); a sense of usefulness or having something to contribute (such as volunteering for community projects); a sense of belonging and being part of a community (such as identifying positively with an ethnic or a social group); and a sense of power or having control over one’s future (such as having access to education or training). Positive youth development involves a community-wide
approach to ensure that young people develop knowledge and skills, belong and contribute to a community, and plan effectively for their future.

In its efforts to develop and strengthen the capacity of the legal profession to comprehensively address adolescent health, the ABA Center on Children and the Law has used its publications and training opportunities to reach out to legal professionals.

Fostering Connections Act
Although passed in 2008, provisions of the Fostering Connections to Success and Increasing Adoptions Act are still being implemented across the country, and the health-care and coordination provisions are essential to ensuring the well-being of children in state care. The act addresses several issues that promote health and well-being, including making it easier for relatives to care for children while increasing resources that help birth families stay together or reunite. P.L.110–351. Fostering Connections also requires states to develop plans to coordinate and oversee health services for children in foster care, in coordination and collaboration with health-care and child-welfare experts.

Each state’s plan must include a coordinated strategy to identify and respond to children’s health-care needs, including mental and dental health. The plan must describe how initial and follow-up health screenings will be provided, how any identified health needs will be treated and monitored, and how medical information will be updated and appropriately shared with providers.

The plan must also detail the steps that are or will be taken to ensure the continuity of health-care services, including the possibility of establishing a medical home for every child in care and what will be done to ensure the oversight of prescription medications, including psychotropic drugs. Medical homes provide a single source of coordinated health care that ensures a child is being seen frequently and allows health-care providers to develop a relationship with that child. Continuity of care in one centralized location provides better outcomes for children, including increased immunization rates, fewer emergency room visits, decreased hospitalization, and improved perceptions of the quality of care.

Attorneys for children and judges in dependency cases can take several actions to promote the use of medical homes. Judges can require a medical home whenever possible and should ensure the initial placement for a child is carefully selected with continuity of care in mind. Attorneys can advocate for such placements and work to maintain the integrity of the placement. Whenever a change in placement is needed, they should try to keep the child in the same geographic area and make sure all the professionals involved in the case understand the importance of maintaining the child’s medical home.

Health Reform
Of great importance to child advocates, however, are the specific provisions that apply to children and youth in care so that they can ensure their clients receive newly available services and benefits. Some sections focus on delivering services to parents to prevent child abuse and neglect or the potential removal of children from their home. Others provide funding to improve health-care services that benefit children and youth, and advocates should determine whether their clients can benefit from these provisions.

For example, child-welfare agencies must now ensure that transition plans for youth aging out of care include specific health-related information, including information about health insurance options and the importance of designating a health-care proxy when treatment decisions must be made but the child cannot participate. Another provision requires states to offer youth who exited foster care extended Medicaid coverage up to their 26th birthday if the youth was in care on their 18th birthday (or older). Eligible youth receive all Medicaid benefits, including early and periodic screening, diagnosis, and treatment (EPSDT). Likewise, children who were adopted from the foster-care system may benefit from the provision that extends coverage under a parent’s private health insurance for unmarried children up to age 26. Klain, Kendall & Pilnik, “How Health Care Reform Helps Children in or at Risk of Entering the Child Welfare System,” 29(3) ABA Child Law Practice 42 (May 2010).

Pregnant and Parenting Teens in Care
A recent study of young or expectant parents in foster care in Illinois revealed that almost 25 percent of teen mothers in the study had two or more children, more than one in five pregnancies involved either no prenatal care or care that began during the third trimester, and 22 percent of mothers were investigated for child maltreatment, while 11 percent had one or more of their children placed in foster care. Dworsky, A. & J. DeCoursey. Pregnant and Parenting Foster Youth: Their Needs, Their Experiences. Chicago: Chapin Hall at the University of Chicago, 2009. These statistics point to numerous challenges facing adolescents in care that can be addressed through strengthened legal advocacy.

Common questions that legal practitioners encounter when advocating for young or expectant parents include whether the state can automatically take custody of the teen’s child simply because the parent is a ward of the state (no) and whether the care provider of a youth in care can receive funding for the youth’s child even if the child is not in care (yes). A state can only take custody of the child of a youth in care if the statutory definition of abuse or neglect is met, and the state must afford the teen parent due process. In addition, maintenance payments can be made on behalf of a child of a youth in foster care under Title IV-E of the Social Security Act without the child being taken into care.

Lawyers can better serve their pregnant or parenting clients by ensuring that they receive the supports and services they need to parent successfully. These may include advocating for a supportive placement where the teen parent and child can live together, ensuring the teen client and her baby receive prenatal and postnatal care, providing health and nutrition education, and
accessing mental-health services as needed. Pilnik & Austen. “Advocacy for Young or Expectant Parents in Foster Care,” 28(7) ABA Child Law Practice 110 (2009).

New Technologies: Cyberbullying and Sexting
Along with emerging technologies popular among youth come emerging legal issues that youth often do not even contemplate. Among these are the headline-grabbing issues of “sexting” and cyberbullying. Recognizing the seriousness of bullying, including cyberbullying, and other youth-to-youth harassment, the American Bar Association unanimously passed a resolution on February 14, 2011, that urges federal, state, and local officials to prevent and address the existence and dangers of bullying, including cyberbullying. The new ABA policy calls on Internet Service Providers (ISPs) and social networking platforms to adopt terms of service that define and prohibit cyberbullying and cyberhate, urges law enforcement agencies to cooperate with the FBI’s data-collection program related to hate crimes, and urges school districts to follow the lead of the U.S. Department of Education Office of Civil Rights guidelines on bullying and harassment. At the same time, the policy states that the application of related laws and policies should not compromise students’ protected First Amendment rights.

While there is no legal definition of “sexting,” it is generally defined as the sending of sexually explicit texts or nude or partially nude images of minors by minors with a cell phone or similar device. Interdisciplinary Response to Youths Sexting, Youth Online Safety Working Group (2010). According to recent research, sexting affects approximately 1 in 6 youth (Pew Internet & American Life Project, 2009), while 19 percent of teens surveyed in another study had sent, received, or forwarded sexually suggestive nude or nearly nude photos through text message or email. Of those teens, 60 percent sent the photos to a boyfriend or girlfriend, while 11 percent sent them to someone they did not know. (Cox Communications, June 2009).

An estimated 13 million children and adolescents were victims of cyberbullying in 2006, and among high school girls, 68 percent of cyberbullies are acquaintances. Of particular concern is that in 50 percent of incidents, the victims of cyberbullying are also physically bullied. See www.schoolsecurity.org. The Cyberbullying Research Center has also determined that from a random sample of 400 12–18 year-olds from 41 schools in a large southern district, 20 percent experienced cyberbullying regularly, while 20 percent also admitted to being a cyberbully at least once. Cyberbullying Research Center, February 2010.

Often, youth do not realize the consequences that their sexting or cyberbullying behavior can have. Responses to sexting vary from jurisdiction to jurisdiction, and may include criminal justice charges or civil penalties. Teens from 13 to 18 years of age who take suggestive photos of themselves and/or others and send them via cell phone or other technology may be prosecuted as adults on child pornography charges. Criminal charges may result in lifelong consequences, such as a requirement to register as a sex offender, which often interferes with a teen or young adult’s ability to find work or live in specific areas (e.g., within a certain distance from schools). Incidents of cyberbullying that occur on campus or disrupt school processes may result in disciplinary action.
Regardless of criminal or civil liabilities, youth who are victims of sexting or cyberbullying may also experience serious health consequences, such as anxiety, depression, or other mental-health issues. To explore the extent of school counselors’ experience with cyberbullying, the ABA’s PIPPAH project is currently conducting a national survey on cyberbullying and school counselors’ roles and responses. The survey has the strong support of the 28,000-member American School Counselor Association (ASCA). This exploratory study will compile aggregate data on the frequency that school counselors face and address allegations of bullying by electronic means, how prepared school counselors believe they are to respond, their perceptions of student vulnerability in the school population, challenges to responding, and innovative interventions. This survey provides an occasion to further understand the opportunities to offer mental-health counseling through schools to address cyberbullying and develop appropriate protocols to further the well-being of youth involved in such incidents.

**Conclusion**

Clearly, the health and well-being of court-involved children and youth is dependent on well-informed and knowledgeable legal advocates. The challenges facing lawyers representing adolescents are matched by the opportunities to improve their health through collaboration with other disciplines working on behalf of youth. The ABA Center on Children and the Law’s PIPPAH project can help provide needed resources and advocacy tools.

**Keywords:** litigation, children's rights, health, PIPPAH, Fostering Connections Act, Patient Protection and Affordable Care Act, health reform

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**Constance McMillen: Extending the Rights of LGBT Students**

By Alysson Mills – January 6, 2011

By now, few people haven’t heard of Constance McMillen. But this time last year, she was a stranger to fame. A senior at Itawamba Agricultural High School in Fulton, Mississippi, Constance wasn’t so different from her classmates. Her distinguishing trait was that she is gay. But when her school told her that she could not take her girlfriend to the senior prom, nor wear a tuxedo to it, she had the good sense to take a stand. Unfortunately for all involved, her school also took a stand—by canceling the prom altogether.

With less than a month to save the prom, Constance, aided by the American Civil Liberties Union (ACLU), sued her school in the U.S. District Court for the Northern District of Mississippi, alleging the school’s actions violated her First Amendment rights. Ruling on her motion for a preliminary injunction, Judge Glen Davidson agreed that the right of gay and lesbian students to bring same-sex dates to proms “falls squarely within the purview of the First Amendment.” Attending a prom with a same-sex date and wearing gender-nonconforming
clothing to it, he explained, are forms of expression and therefore protected by the First Amendment: “Constance has been openly gay since eighth grade and she intended to communicate a message by wearing a tuxedo to express her identity through attending prom with a same-sex date. . . .

[T]he Court finds that Constance’s First Amendment rights have been violated.” McMillen v. Itawamba County Sch. Dist., 1:10-cv-61, 2010 WL 1172429 (N.D. Miss. Mar. 23, 2010).

Judge Davidson nevertheless stopped short of ordering the school to host the prom as planned. Relying on the school’s promise that parents would sponsor a “private” prom that Constance and her girlfriend could attend, he concluded that an injunction forcing the school to host an “official” prom was unnecessary.

Constance’s public life could have ended there, but in fact it was just getting started. Parents who were planning the promised “private” prom didn’t want Constance there; when pressed as to why Constance had trouble obtaining a ticket, they, too, canceled their event. The school thus found itself in a bind, with not a lot of time to spare. Scrambling, its superintendent and attorney privately met with parents. The next day they announced that arrangements had been made: A last-minute prom would be held on Friday night, at the local country club.

What followed was well publicized. When Constance arrived at the country club on Friday night, only seven students were there. The fact that her classmates attended a secret prom at another location oozed out over the weekend. By the next week, news of the “sham prom” incident had gone viral.

Could life get any worse for Constance McMillen? Yes. As the school drew the scorn of outsiders, many local residents directed their anger at her. Preachers condemned homosexuality in sermons, some televised, that referred to her by name. Letters to the editor called her an attention-grabber. Rumors about her swelled, and her peers routinely accused her of ruining their school year. Among the many text messages she received, one stated, “I don’t know why you come to this school because no one likes your gay ass anyways.” Another asked, “Are you going to ruin graduation too?”

Due to the hostility at home, Constance didn’t have a chance to ruin graduation. With only a few weeks left in the school year, she transferred to another school district. In June, her former school agreed to pay her $35,000 and consented to an entry of judgment against it. In October, Judge Davidson ordered the school to pay $81,000 in legal fees to Constance’s attorneys.

It’s easy to reflect on Constance’s experience now and overlook its legal import. The events that unfolded were so reprehensible that they have tended to overshadow the legal precedent Constance made. For a lot of Americans, the right of gay and lesbian students to take a same-sex date to a prom seems obvious. Yet, when Constance made the decision to fight her school, legal victory was far from certain. No court in Mississippi (nor even in the Fifth Circuit) had ever held
that gay and lesbian students have a First Amendment right to express their sexual orientation. And only one federal court—the U.S. District Court for the District of Rhode Island, in 1980—had held that gay and lesbian students have a right to bring same-sex dates to school-sponsored proms. But in that case, the school did not cancel its prom altogether. In Constance’s case, the school district could (and did) argue that it canceled its prom because it had no obligation to host one in the first place. Arguably, Judge Davidson could have disposed of Constance’s case on that basis. But he did not, and today there is law—in Mississippi of all places—that holds that gay and lesbian students have a First Amendment right to attend school proms with same-sex dates.

Thanks to Constance’s resolve, the legal rights of lesbian, gay, bisexual, and transgender (LGBT) students everywhere are stronger. And thanks to her example, LGBT youth will feel more confident challenging the discriminatory acts of schools in courts. In Mississippi, a new LGBT rights lawsuit is already under way: In August, Ceara Sturgis filed an action against her high school after it cut her from its yearbook because she wore a tuxedo in her senior portrait. Ceara argues that schools violate the Equal Protection Clause and Title IX when they discriminate on the basis of gender nonconformity. If successful, her lawsuit will continue what Constance and others started—and will help make schools everywhere less hostile environments for LGBT students.

**Keywords:** litigation, LGBT, Constance McMillen, school, prom

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**NEWS & DEVELOPMENTS**

**New Publication Focuses on Multi-System Youth**

[Robert F. Kennedy Children’s Action Corps](https://www.rfk.org/) and Georgetown University’s [Center for Juvenile Justice Reform](https://www.georgetown.edu/cjjr/) have launched a new electronic periodical, *The Connector: Working Together for Multi-System Youth*. *The Connector* will provide information to assist multi-system youth—those who have a wide range of needs in many different systems, such as child welfare, juvenile justice, mental health, and education. Quarterly issues will provide the latest information on initiatives, research, model programs, and policy. The [first issue of The Connector](https://www.rfk.org/the-connector) is free and available now.

**Keywords:** litigation, children’s rights, Robert F. Kennedy Children’s Action Corps, *The Connector*, multi-system youth

— Catherine Krebs, committee director, ABA Section of Litigation, Children’s Rights Committee, Washington, D.C.
Review of Oklahoma Child Welfare Documents Concerns

The Center for the Support of Families, Inc. (CSF) conducted a review of a statistically representative sample of cases of children in the custody of the Oklahoma Department of Human Services (OKDHS) under the direction of Dr. Jerry Milner, vice president of Child and Family Services. The study, Foster Care Case Review of the Oklahoma Department of Human Services, found several agency shortcomings regarding the treatment and placement of children while they were in OKDHS custody.

Among the primary concerns was the fact that 21.4 percent of children in the sample were the subject of a maltreatment allegation while in OKDHS custody that was substantiated or where there was sufficient concern to recommend services. Of the 374 children in the sample, 205 (54.8 percent) experienced four or more placement settings during their most recent entry into OKDHS custody; 52 (13.9 percent) children experienced 10 or more placement settings.

Keywords: litigation, children’s rights, Oklahoma, Center for the Support of Families

— Marlene Sallo, web editor, Children’s Rights Litigation Committee

Florida’s Zero-Tolerance Policies Continue to Push Students Out

The ACLU of Florida, the Advancement Project, and the Florida State Conference of the NAACP have released a report on their study of the ongoing harmful effects of Florida schools’ “zero-tolerance” policies. The study, Still Haven’t Shut Off the School-to-Prison Pipeline: Evaluating the Impact of Florida’s New Zero-Tolerance Law, shows that although Florida took a significant step forward in the Spring of 2009 by amending its harsh zero-tolerance discipline laws, meaningful reform has yet to reach most of the schools—and students—across the state.

According to the report, racial disparities in referrals to the juvenile justice system actually got worse after the passage of SB 1540. In addition, in spite of the new law, most school districts’ policies still allow for extremely severe punishments—such as arrest, referral to law enforcement, and expulsion—for relatively minor infractions.

Keywords: litigation, children’s rights, Florida, zero tolerance

— Marlene Sallo, web editor, Children’s Rights Litigation Committee
Parent Representation Can Shorten Time in Foster Care

Partners for Our Children (POC) in the state of Washington recently conducted a study to determine the impact of its Parents Representation Program (PRP) and found that the representation of parents can shorten the amount of time that children spend in foster care.

The PRP, developed by the Washington State Office of Public Defense (OPD) and the 1999 Washington State legislature, is designed to improve defense representation for parents in dependency and termination hearings. This study looked at the program’s influence on the speed at which children are reunified with their families, are adopted, or enter guardianships.

Keywords: litigation, children’s rights, foster care, Washington, Partners for Our Children, Parents Representation Program

— Catherine Krebs, committee director, ABA Section of Litigation, Children’s Rights Committee, Washington, D.C.

ABA Section of Litigation Children’s Rights Litigation
http://apps.americanbar.org/litigation/committees/childrights/home.html