Life after Roper: Using Adolescent Brain Development in Court
By Wendy Paget Henderson Esq.

Over the past decade, scientific evidence regarding adolescent brain development has grown exponentially. Our understanding of how the brain develops has fundamentally shifted, from the belief that the brain is fully developed at birth to the knowledge that the brain undergoes important structural changes through the mid-20s. This research has led to a number of questions about how to effectively treat youth in the criminal justice system, and what it would look like to provide treatment that mirrored their developmental stage.

Over the same decade, the ramifications of the criminal justice reforms of the mid-90s, when nearly every state made it easier to try youth in adult court and incarcerate youth in adult prisons, have become clear. The research has shown that trying youth as adults is counterproductive as a way of promoting community safety. Youth who are tried in adult court recidivate more quickly and with more serious crimes than those tried in juvenile court. The results of the studies from the U.S. Centers for Disease Control and Prevention and the U.S. Department of Justice, have been the same: Trying youth as adults simply does not work. With this wealth of research in hand, attorneys have been working on moving adolescent brain development front and center into the juvenile and criminal court.

Providing High-Quality Representation for LGBTQ Youth in Foster Care
By Mimi Laver

It is hard to be an adolescent. It is even more difficult to be an adolescent who is placed in foster care. Imagine, then, the struggles a lesbian, gay, bisexual, transgender, or questioning (LGBTQ) youth who is in foster care might face. LGBTQ youth are often kicked out of their homes when they disclose their LGBTQ status to their parents. They engage in risky behaviors at a greater rate than their non-LGBTQ peers. They are often disrespected, or worse, while in foster care and involved in the child welfare legal system. In fact, research shows that:

• More than 4–10 percent of youth in state care are LGBTQ identified.
• Twenty-five to 40 percent of homeless youth are LGBTQ. (Half of gay or bisexual young men who are forced out of their homes because of sexual orientation engaged in prostitution to survive.)
• LGBTQ youth experience high rates of substance abuse due to stigmatization. (Sixty percent of gay and bisexual young men are substance abusers, compared with less than 4 percent of youth in the population as a whole.)
• Thirty percent of LGBTQ youth reported physical violence by family after coming out.
• Eighty percent of LGBTQ students reported verbal harassment at school. (Seventy percent felt unsafe; 28 percent dropped out.)
From the Editor

I’m sure you have noticed our new look this edition. *Children’s Rights* is very excited to have been chosen as a “production newsletter” by the Section of Litigation. This means that our newsletter is now put together by a professional designer. It also means that we can devote more time to the content of each newsletter. We invite you to join our newsletter editorial board to assist us in raising the quality of our content. While not terribly time-consuming, it is a great way to get involved in the committee and to get to know other members. We are also exploring the expansion of the editorial board’s input to our website. If you are interested in hearing more about joining the editorial board, please contact me.

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MESSAGE FROM THE CHAIRS

"In the little world in which children have their existence . . . there is nothing so finely perceived and so finely felt as injustice."

Charles Dickens

For more than three decades, the representation of abused and neglected children in Juvenile Court (referred to as “dependent” or “deprived” children in most states) has been one of the most debated, discussed, and challenging issues affecting this vulnerable client population. Whether the attorney’s role is to pursue the client’s expressed wishes, (typically at one end of a continuum of thought), or to assert a best-interests view of the child’s situation (often perceived to be at the other end), or a combination of the two, imposing on the same attorney two potentially conflicting roles, or requiring different roles depending on an arbitrary age of the child, is determined by state law and practice. Given this range of alternatives, it is not surprising that there is little agreement across the nation regarding this powerful, yet disparate, role. In many instances, this role has a huge impact on the life of a child.

Forty years after *In re Gault*, recognized that children charged with juvenile delinquency are entitled under the due process clause to a lawyer, children in dependency cases have had no such recognized right, until recently. In late 2005, one federal district court in Georgia, relying on the state’s constitution, ruled that children in dependency cases do have a constitutionally protected right to an attorney. Whether this decision paves the way for similar challenges in other states remains unclear, yet this remarkable victory and the leadership of one thoughtful judge has inspired attorneys across the nation to consider similar litigation.

The ABA Children’s Rights Litigation Committee has been focused on this right to counsel for children for the last three years. Over a year ago, we commissioned many different law firms to research and write papers analyzing the possibility of a right to counsel in each of the 50 states and Washington, D.C. This extraordinary pro bono effort propelled the formation of a right to counsel strategy group representing several different states. This group has continued the research and is identifying and mobilizing interested attorneys.
and advocates on the ground who might partner with us to implement a chosen strategy on behalf of a particular state’s children. Anyone interested in participating in this strategy group is welcome to join (simply contact our committee director).

In addition, there are two timely events that have generated even greater enthusiasm for the right to counsel effort. The first event is a first-of-its-kind study measuring the impact of legal representation for children, entitled “Expediting Permanency: Legal Representation for Foster Children in Palm Beach County”; and second, a National Children’s Summit that we will host in Chicago at Northwestern University, in October 2009, that will focus in part on right to counsel, to mobilize attorneys across the nation to pursue this important right for maltreated children. (The other part of the summit, discussed in more detail below, will focus on local and national strategies for litigators to protect every child’s right to an education.)

Chapin Hall Study
Chapin Hall, Center for Children, at the University of Chicago, has just published a study that evaluates the impact of legal representation for children (the study can be found on its website at www.chapinhall.org). What is most critical about the findings is the attorneys’ positive impact on permanency. Children represented by the attorneys at the Foster Children’s Project (FCP) were found to have a significantly higher and quicker rate of exit to permanency than children not served by FCP. This difference appears to be a function of high rates of adoption and long-term custody among FCP children. FCP children were found to have moved from case-plan approval to permanency at approximately twice the rate of non-FCP children. These higher rates were not offset by significantly lower rates of reunification. In fact, transition of FCP children to reunification was also at a higher rate than comparison children. Despite the greater speed in both reunification and other permanent alternatives, there were no differences in rates of reentry between FCP and comparison children, often a serious caution raised by stakeholders pursuing expedited permanence.

There were four program activities that constituted the core of FCP’s advocacy: the filing of legal motions; the filing of termination of parental rights petitions and recruitment of adoptive homes; attendance at staffings and case-plan meetings; and service advocacy. FCP’s attempts to influence the content of case plans served as the lynchpin for all of the other efforts. It is the individualized nature of FCP-influenced case plans that affords leverage to these other activities.

Although there was broad agreement that FCP reduced the time children spent in substitute care, perceptions about the appropriateness of the above activities were divided. In addition, both FCP and non-FCP youth reported a mix of anxiety, anger, and frustration associated with their experiences in Juvenile Court. However, many youth agreed that an adult advocate alleviated the mystery and anxiety associated with the court process.

In this particular agency, FCP assumes the role of a traditional legal advocate, for whom the provision of assertive legal representation is a matter of principle. One unique aspect of FCP is the recognition that effective attorney representation require a reasonable caseload. Each attorney in FCP carried a caseload of approximately 35 children, a standard that arguably influences meaningful outcomes for children. Many attributed FCP’s effectiveness to the level of resources at its disposal, including the expertise and dedication of its staff, and its ability to cultivate connections with community organizations and the judiciary. Additionally, FCP has operational autonomy that is contrasted to the bureaucratic and political hierarchy under which the department of child welfare must operate.

Though caseload size and the unique circumstances in Palm Beach County may limit the application to other offices, the findings from this study should have a right to counsel under the Georgia Constitution (which mirrors the U.S. Constitution). In January 2006, children’s law experts from around the country gathered at the Conference “Representing Children in Families,” at which they reaffirmed that children should have a right to counsel and to discuss what that right should entail. In April 2007, First Star (a Washington, D.C.-based advocacy group for children) released a report that kicked off a national campaign to promote a child’s right to counsel. As a result of our work detailed earlier, the ABA Children’s Rights Litigation Committee and its strategy group
are exploring next steps in five states identified through its research. Based on the energy around the country and the multitude of attorneys engaged in this critical issue, this is the ideal time to host a summit and develop a national strategy.

The second track will focus on local and national strategies for litigators to protect every child’s right to an education, thereby addressing his or her safety and success in school. More than a decade ago, schools began implementing zero tolerance policies that mandated the expulsion of students for even minor infractions on school grounds. Law firms, universities, and legal aid offices began to develop pro bono programs across the country to provide legal representation for children in these matters but can handle only a small fraction of the actual need. In 2001, the ABA adopted a policy resolving that the ABA opposed zero tolerance policies that mandated expulsion without regard to individual circumstances. Since then, the CRLC’s education subcommittee has taken a national leadership role in bringing attorneys and agencies together to study and analyze solutions. It has become clear that the problems of keeping children in school go beyond zero tolerance to policies that involve children being “pushed out” of school. Litigators and lawmakers are seeking the leadership of the ABA to address this formidable challenge. As with a right to counsel, it is an ideal time to address the exclusion of children from school at a national summit.

For new attorneys, seasoned attorneys, specialists in children’s law, as well as pro bono attorneys seeking new challenges, this is an important opportunity. No other issue in the last 30 years is more important than a child’s right to counsel; in dependency matters, counsel assists in the determination of a child’s safety and family; in education matters, counsel is the key to unlocking a productive future.

This national summit, Raising our Hands, will take place on October 23, 2009, in Chicago, Illinois. There will be no cost to attend the summit, so travel will be your only expense. Join this summit to take part in a revolution of hope so desperately needed by the hundreds of thousands of vulnerable children each year who need a strong, effective voice.

On behalf of all those children across the nation, thank you for your efforts.

As we kick off the 2008–09 year, we would like to introduce our newest cochair, Lisa Dewey. Lisa’s full time pro bono practice includes developing projects in the area of juvenile justice and cultivating her firm’s strategic thinking on pro bono, including DLA Piper’s vision for the firm’s U.S. pro bono program, and serving as Assistant Director of New Perimeter, DLA Piper’s nonprofit affiliate dedicated to global pro bono. We are excited to welcome Lisa as our cochair!

Shari Shink is the founder and director of the Rocky Mountain Children’s Law Center in Denver, Colorado.

Angela Vigil is the North American Director of Pro Bono and Public Service for Baker & McKenzie LLP in Miami, Florida.

Lisa Dewey is Pro Bono Partner at DLA Piper in Washington, D.C.

Endnotes
Life after Roper
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Translating the Research
Research on adolescent development can be used to support the propositions that adolescents are more reckless than adults, more susceptible to peer influence, less able to judge the risks of their behavior, less able to envision the long-term consequences of their actions, and generally less culpable than the typical adult. However, science has not progressed to the point where an individual adolescent’s brain scan can be used to back up any one of these propositions in an individual case. As attorneys, the challenge becomes taking the general principles of adolescent development and effectively integrating them into a specific case, either as a defense or a mitigation factor in sentencing. The following discussion is a snapshot of how recent brain research is currently being used around the country to bolster arguments that adolescents are different from adults and should be treated differently.

A Word about Competence
Competence is a low bar, but many adolescents are still not able to make it over. The arguments that follow assume that competence has been established. It is imperative to ensure competence before moving forward. A recent study by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice found that currently being used around the country to bolster arguments that adolescents are different from adults and should be treated differently.

Sentencing Mitigation
Adolescent development science indicates that youth are not the most culpable of criminals. The U.S. Supreme Court confirmed this in Roper v. Simmons. The Court found that the differences between adolescents and adults in their impetuous nature, susceptibility to peer pressure, and transient personality “... render suspect any conclusion that a juvenile falls among the worst offenders.”

Similarly, it can be argued that in states that offer a range of sentencing options for crimes, juveniles should be on the lesser end of the sentencing scale. The case of Illinois v. Clark illustrates this type of argument. In Clark, an adolescent defendant was convicted of first-degree intentional homicide and sentenced to 46 years in prison, within the statutory sentencing range but closer to the higher penalty end of the range. At trial, the defense called Dr. Rubin Gur, a leading neuropsychologist and national expert on adolescent brain development. He testified to the impact of adolescent brain development on behavior. Although he had not studied the defendant’s brain, he testified that there was “very little disagreement” that adolescents have a hard time changing the course of their behavior because they are unable to contextualize their actions.

The trial court found the testimony about brain development fascinating, but decided that it was not relevant because the neuropsychologist had not individually assessed the defendant. The appellate court disagreed and reduced the sentence 10 years (to 36 years), finding that the trial court did not fully consider the mitigating evidence presented about the adolescent’s age and development.

Duress or Coercion
Adolescent brain development may also be used to bolster a defense of duress or coercion. In the Connecticut Supreme Court case State v. Heinemann, the defense of duress was raised with a focus on adolescent development. The defendant argued that the trial court “failed to provide a jury instruction that would have allowed the jury to factor [the defendant’s] age into the defense... with an eye toward accounting for the difference in how adolescents evaluate risks.” In this instance, the higher court acknowledged that adolescents are different from adults:

We understand the defendant’s plea, acknowledge that juveniles often have more immature decision-making capability, and recognize the literature supporting the notion that juveniles are vulnerable to all sorts of pressure, including, but not limited to, duress. However, the court found that if they were to acknowledge adolescent differences, that would require rewriting the entire Penal Code. A requirement to consider the age of young offenders to understand their culpability with relation to their particular vulnerabilities and susceptibility to peer pressure would be a significant departure from the Penal Code. The court declined to make such a drastic change in the Penal Code, suggesting that those types of changes would have to come from the legislature.

The court went on to find that adolescents may have particular difficulty recognizing the option to remove themselves from the situation (a typical component of most coercion or duress statutes). However, the legislature’s determination in Connecticut that 16-year-olds should be treated as adults for criminal liability purposes in all cases was dispositive on the issue.

Although the Heinemann court declined to adopt a new rule about adolescents’ particular vulnerabilities, they did provide good language about the differences between adolescents and adults. In other states where there is an age of adult court jurisdiction of 18 and a juvenile is transferred or waived into adult court, this argument may be more viable. Alternatively, an argument can still be made that the reasonable adolescent
would not be able to see an escape route from a situation, even if the reasonable adult could discern an alternate solution or solutions.

**Reckless or Reasonable?**

One of the most obvious places where our legal system fails to account for adolescent development is in the assessment of recklessness. Scientific research has confirmed the general understanding that adolescents take more risks than adults do, and fail to perceive the riskiness of their behavior due to a failure to weigh long-term consequences as heavily as short-term gains. Many statutory definitions of recklessness require an awareness of the level of risk. For example, the jury instructions for first-degree reckless homicide in Wisconsin include a requirement that defendants be aware that their conduct creates an unreasonable and substantial risk of death or great bodily harm. The requirement for a subjective understanding of the risk has proven to be an area ripe for challenge with adolescents.

In *J.R. v. Alaska*, the question for the court of appeals in Alaska was whether the court should measure a 15-year-old against a reasonable juvenile or a reasonable adult standard. In this case, a high school student shot and killed two people at the school. The State uncovered that the defendant in this case, J.R., taught the student how to use a shotgun and encouraged him to carry out the plan to take the shotgun to school and commit murder. It was undisputed that J.R. knew that shooting people with a shotgun was dangerous. The dispute was whether J.R. knew or reasonably should have known that [his classmate] would go beyond mere words and would actually proceed to gun people down at the school. To resolve this issue, the jury should have evaluated J.R.’s level of care against the standard reasonably expected of a juvenile—not an adult. The trial court found that because J.R. was engaged in an adult activity, conduct with a firearm, he should be held to a reasonable adult standard. The Appellate court reversed. The juvenile argued that he was not serious about actually helping his classmate in committing murder, but was instead just bragging.

We are unaware of any authority to support the claim that J.R. should be held to an adult standard for his actions of showing [his classmate] how to use a shotgun and encouraging him to carry out the plan to take the shotgun to school and commit murder. . . . It was undisputed that J.R. knew that shooting people with a shotgun was dangerous. The dispute was whether J.R. knew or reasonably should have known that [his classmate] would go beyond mere words and would actually proceed to gun people down at the school. To resolve this issue, the jury should have evaluated J.R.’s level of care against the standard reasonably expected of a juvenile—not an adult.14

Louisiana decided similarly on the issue, essentially creating a reasonable juvenile standard of care. Minnesota has two different standards—the reasonable juvenile in juvenile court and the reasonable adult in adult court.15

**Mental Responsibility**

The statutes for mental responsibility vary nationally, but there is an argument that for those states that have adopted the M’Naghten test, adolescence may fall into an exception to M’Naghten. In *State v. McLaughlin*,17 the court heard significant testimony that in light of recent developments in adolescent brain research, the application of the M’Naghten rule to adolescent defendants violates the due process clause of the Minnesota Constitution.

The adolescent development literature has well documented the impulsivity of youth. It follows that many adolescents would fall under the irreversible impulse test within the M’Naghten rule. That is, “a person is not criminally responsible for an act if mental disease or defect prevented that person from controlling potentially criminal conduct.” In essence, because adolescence is a time of continual irresistible impulses, they fall within the M’Naghten definition of not being criminally responsible.

The issue was not decided in the McLaughlin case because it had not been raised at the lower court level. The intersection between normal adolescent development and the mental disease or defect defenses seems ripe for further exploration in the courts. Certainly, there is an argument that adolescence is not a perpetual state of mental illness; however, the measures by which adult mental disease and defect are judged may be inadequate to gauge mental responsibility in adolescents.

**More to Come**

As brain science continues to become accepted in courts, and as we learn more about adolescent development, there will be other challenges to how youth can fairly be held accountable in court, while taking into account their particular developmental stage. Maturity has long been a component of statutory considerations of who should be waived (or transferred) into adult court, and which juveniles should be returned (or reverse waived) into juvenile court. Brain development has further implications for imperfect self defense,19 the infancy defense,20 and other areas of law where juveniles are currently being held.
to adult standards of conduct. Ages of jurisdiction for juvenile court, both lower and upper, have been questioned around the country in light of brain science.

In the years to come, a body of law will develop outlining the boundaries of how youth will be held accountable in developmentally appropriate ways. By understanding how brain development affects the actions of youth, we can better devise ways to keep communities safe from dangerous youth, while not foreclosing future opportunities for youth who are simply acting impulsively and recklessly—in other words, acting like teenagers.

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Endnotes


5. Roper v. Simmons, 543 U.S. 551 at 570.


8. Id. at 278, emphasis added.

9. Id. at 308. The Court included in footnote 19 of its opinion a comprehensive summary of current adolescent brain research findings.

10. Id. at 309.

11. Connecticut had an age of adult court jurisdiction of 16 at the time of the opinion. Since the writing of the opinion, Connecticut changed its law to return 16- and 17-year olds to the original jurisdiction of the juvenile court, effective January 1, 2010.


14. Id. at 121.

15. In re Malter, 508 So.2d 143 (1987).


LGBTQ Youth
(Continued from page 1)

- LGBTQ high school students are three times more likely to report carrying a weapon to school.
- LGBTQ youth are two times more likely to attempt suicide than their heterosexual peers.¹

As a lawyer representing an LGBTQ youth in foster care, you have an important responsibility that includes being mindful of the youth’s safety; not simply assuming the youth is in a safe placement but verifying it; trying to ensure that the youth is receiving services from an LGBTQ-friendly provider; and advocating for the youth to maintain a relationship with his or her family if that can be done without risk to the youth. You are the voice for your client to the child welfare agency and court, while encouraging the youth to express his or her own needs and wishes. You should try to be attuned to warning signs that your client needs assistance, and help the youth find adults outside the system who can be supportive on a long-term basis if needed.

Develop a Strong Lawyer-Client Relationship

One of your first and most important steps is to get to know your client and start building a trusting relationship. You need to understand the larger picture about LGBTQ youth and the difficulties they encounter as a whole, but you also need to take the time to talk to your client and find out his or her story. Like most adolescents, your client may not disclose many personal details on the first meeting. You must set aside time to meet with your client regularly and demonstrate that you are open to discussing whatever is important to him or her without judgment. Remember, building this relationship is a process that will continue for the entire time you are involved with this youth.

According to Marisa Howard-Karp, Program Director for The GLBT Youth Support Project, “Judges and attorneys are in positions of power. They need to communicate with kids in a way that will allow kids to be honest so the judges and lawyers can do their work.”²

To protect the lawyer-client privilege and the trust developed with a client, a lawyer should always secure permission from the client before discussing his or her LGBTQ status with anyone.

Like most adolescents, your client may not disclose many personal details on the first meeting (or the second, or the third, or the fifth . . . ).

TIP: There are several things you can do to help foster an open relationship with your client. For instance, use gender-neutral language: Are you dating anyone? Do you have a partner? Who are the important relationships in your life? (Rather than, do you have a boyfriend/girlfriend?) From the beginning, youth are attuned to the choices of words you use. When you choose inclusive rather than exclusive language, you send a clear message.

Other ways to begin gaining the youth’s trust include:
- Asking, and using, the youth’s pronoun of choice. Do not assume, by the way the youth appears, what pronoun that would be.
- Encourage the youth to dress as he or she chooses.
- Display a hate-free zone sticker or similar symbol in your office. Youth are keyed into small signs that adults are respectful of all lifestyles.

Examine Your Attitudes

Another step you should take early in the case is examining your own attitudes about those who identify as LGBTQ and ensuring that these attitudes do not negatively impact your representation.³

When talking about the adults in his life while living in foster care, Carl said, “Do you know how it feels? I mean I couldn’t live at home with my own family because of who I am, and then to get treated like that by people who are supposed[ed] to be professional and deal with kids. I just don’t think it’s fair. It’s just not right.”⁴

LGBTQ youth should be able to rely on their lawyers to be the professionals who give voice to their issues and concerns. If clients sense their lawyers have negative attitudes about them, trust will immediately disappear. If the youth do not share important information, their lawyers will not be able to access the services and placements that would best meet their clients’ needs.

In drafting the Model Rules of Professional Conduct, the ABA acknowledged that lawyers are human and may have negative attitudes about certain groups of people, but they may not let their attitudes impact their cases. Rule 8.4 Misconduct, Model Rules of Professional Conduct, reads in part:

It is professional misconduct for a lawyer to . . . (d) engage in conduct that is prejudicial to the administration of justice.

The comment to this section states, “A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based
upon race, sex . . . sexual orientation . . . violates paragraph (d) when such actions are prejudicial to the administration of justice.\textsuperscript{95}

To serve LGBTQ youth well, and to follow the Model Rules, requires leaving any negative attitudes you have about LGBTQ individuals behind. You can think what you want, but those thoughts and feelings cannot influence the recommendations you make or the level of your zealfulness in making them.

**LGBTQ Status Matters: Safety**

Many lawyers wonder why a youth’s LGBTQ status should matter. After all, many say, “I don’t talk to my straight clients about their love lives.”\textsuperscript{96} Consider a young woman in Tennessee who was placed in a pre-adoptive home. Her permanency planning was going well until she came out as a lesbian to her pre-adoptive mother. At that moment, her potential adoption fell through, due to the fact that the mother was not willing to adopt a lesbian. Or consider the LGBTQ youth who are told by their foster parents they “are going to burn in hell” because of their status.

For some youth, their LGBTQ status is not a central part of their cases. They may have entered foster care years before and come out and received positive responses from the adults and peers around them. However, for a large number of LGBTQ youth, it is an issue that needs to be addressed.

The primary reason for attorneys to concern themselves with LGBTQ status is safety. LGBTQ youth report being harassed and assaulted by other youth, staff, and foster parents when they reveal they identify as LGBTQ. No one should feel unsafe in their homes. No one should feel they can’t discuss an important aspect of their identity with their caretakers or advocates. For many LGBTQ youth, hiding who they are is a way of life.

In talking about how being gay affected her foster care experience, Shawndelle expressed her anxiety:

> Because I was in the system, I didn’t come out. Coming out affects your placement from what I can tell. I just wanted to be placed and didn’t want to have any possible extra complications that could further delay my eligibility to get some parents. I so desperately wanted to end the stream of group homes. I would have dealt with anything, even homophobic foster parents, to get out of group homes.\textsuperscript{7}

Shawndelle needed a lawyer who she could trust. If she had been able to reveal her identity, perhaps the lawyer could have helped her find a safe placement with foster parents who were not homophobic. An attentive lawyer could have advocated for Shawndelle to be placed somewhere other than a group home.

**TIP:** If a youth’s lawyer knows his or her client is in an unsafe placement, or is receiving services from a provider who is not gay-friendly, the attorney should get the youth’s permission to approach the child welfare agency social worker and ask for a change. If the agency is unwilling to change, the lawyer should argue to the court the agency is not making reasonable efforts to finalize a permanency plan. If the judge makes a no reasonable efforts order, the agency could lose funding and be forced to change the situation.\textsuperscript{8}

**Status Matters: Permanency**

Another reason lawyers need to know their client’s LGBTQ status is to help implement a permanency plan. Returning home (or reunification) to the youth’s family is always the first choice if it can be done safely. Unfortunately, there is often a bias by child welfare professionals that once adolescents come into care, their parents will not take them back and there is no use working towards that goal. This bias is particularly true for LGBTQ youth who come into care when their parents kick them out of their home, based on their status. With appropriate counseling and services, parents can change their attitudes towards their children and love them for who they are. Many adolescents in care return to their biological families after they leave care. If a LGBTQ youth returns home without first working with the family about the issues leading to the placement, the chance of success is poor. However, research has shown that even families who are angry when a family member comes out can work through that anger and be supportive, leading to a positive outcome.\textsuperscript{9}

Based on this research, the agency should provide the services your client and his or her family agree are needed to work towards a safe and emotionally healthy reunification. This could involve family therapy; enrolling in Parents, Families, and Friends of Lesbians and Gays (PFLAG) (see www.pflag.org), or other support groups to meet other families of LGBTQ youth; or education on issues common to LGBTQ youth and their families.

**TIP:** Remember to think about the youth as a whole when advocating for services. Some youth will need the kinds of services that go beyond basic family therapy and PFLAG membership, such as individual counseling, extracurricular activities, religious involvement, or attention for any special needs they might have.

**TIP:** A youth’s family may consist of people other than his or her parents. The youth may have siblings who entered foster care or remained at home, depending on the reasons for the placement. No matter where the siblings are, the youth should maintain a relationship with them, and you should advocate for visitation and include the siblings in family counseling.\textsuperscript{10}

If your client cannot return home, talk to the youth about what his or her vision of the future is. If the youth would like to
be adopted, assist the youth and the child welfare agency to identify an adoptive resource who would support this goal. Adolescents are often able to identify people who would be willing to care for them and be a connection for the youth even after they leave foster care. The client can only do this if asked.

**Advocating Outside the Courtroom**

In addition to meeting with your client regularly, building a strong relationship, and appearing in court, you must advocate for your LGBTQ client outside the courtroom and often with professionals in other systems. Examples include:

- **School system:** Your client may be having difficulty in school, either academically or socially. The youth may be getting harassed or physically harmed. If the client has changed schools many times, it may result in difficulty adjusting. You should make an appointment to see the school counselor with your client to arrange help by a tutor or someone who can watch out for your client’s safety. If your client has an Individualized Education Plan (IEP), you should attend the IEP meeting and advocate for the educational services the youth needs.

- **Juvenile justice system:** If your client gets arrested and is having a delinquency hearing, you should appear or talk with the criminal lawyer before the hearing. The police are often not sensitive to the issues facing LGBTQ youth. Many LGBTQ youth get arrested for sexual behavior that is labeled “predatory” when it is really behavior that would not rise to a criminal level for heterosexual youth. Other LGBTQ youth get arrested for prostitution because they are on the streets and need money. You must ensure that whoever is representing your client in the delinquency proceeding is aware of your client’s LGBTQ status and any relevant concerns.11

- **Health system:** Your client may have health needs but have trouble accessing a doctor who is LGBTQ-friendly and treats minors in foster care. If your client is transgender, there may be medical issues, such as whether the youth should be on hormones, which must be addressed. If your client has a substance abuse problem, he or she needs to access appropriate treatment.

As the lawyer of a client dealing with any of these concerns, you should be on top of the issue and help the youth and caseworker find assistance. If advocating with the agency and providers does not work, then ask the judge to hear the case early and issue an order.

**Questions to Ask**

As the youth’s lawyer in a case, you should be asking questions and obtaining information throughout the life of your client’s case. Here is a sample of those questions. Ask them of the agency, the service providers, and the youth. Use them to start your thinking on the kind of information you should know to help keep the young person safe, healthy, and in a permanent home.

**Safety Concerns**

- Where is the youth placed? Is it a foster home that is open to working with an LGBTQ youth, or one in which the foster parents may not be open? Is it an emergency shelter? Is the youth transgender and placed with other youth who are the same gender with which he or she identifies? Is it a group home? What are the staff like?

- Is the young person free from harassment by staff and peers? Are staff attuned to this issue? Is the youth being excluded rather than included in the home?

- Has your client been evaluated to see if the youth is in danger of self-harming or attempting suicide?

- Are there signs that the youth is abusing drugs or alcohol?

**Permanency**

- Is the agency frontloading services from an LGBTQ-friendly provider?

- Are all professionals in the case working with the child and family on permanency issues at the beginning and throughout the case?

- Has the entire family been engaged in the planning process?

- Are the professionals engaged in concurrent planning?

- How is the family reacting to the youth based on the reason for entry into foster care and LGBTQ status?

- What does the youth want as a permanency plan?

- Has the youth received counseling about permanency options, including returning home and adoption?

**Well-being**

- **Education:** Has the youth had to change schools? If so, is the youth safe in the new school? Is the youth enrolled in proper classes? Is there a Gay Straight Alliance (GSA) in the school, and is the youth aware of it?

- **Medical:** Is the youth being treated like other youth in getting evaluated? Have service needs been identified, and is the youth receiving the necessary medical care?

- **Emotional health:** Does the youth appear to need immediate counseling? Is there a protocol for getting youth evaluations, and is it being followed? If the youth is open about his or her sexual identity, is there an LGBTQ-friendly counselor in the jurisdiction to refer the child to? Has the referral been made?

**Conclusion**

Dominick Magee, a young man who spent 10 years in foster care and identifies as gay, had this to say about what he would have wanted in a lawyer:

I need an attorney to be open-minded, understanding. If possible, agencies should try to recruit openly gay or gay-friendly
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Ensuring Equal Educational Opportunities
By Veronica L. Garcia

Over 50 years have passed since the landmark decision of *Brown v. Board of Education.* Despite the promise that *Brown* brought to our public school systems, the issue of race discrimination and school segregation based on race continues to deny some students equal educational opportunities. Such practices are readily seen when students of color are segregated into bilingual or English as a Second Language (ESL) classes, putting them in different wings of the school despite the fact that they speak English. They are also seen when students of color are disproportionately subject to disciplinary removal, though there is no evidence to indicate they engage in higher rates of classroom disruptions. Both of these practices are examples where the students’ ethnicity or race is affecting their ability to receive the same educational opportunities as their Anglo peers.

The Equal Protection Clause of the Fourteenth Amendment of the United States Constitution (Equal Protection Clause), Title VI of the Civil Rights Act of 1964 (Title VI), and the Equal Education Opportunity Act of 1974 (EEOA) prohibit racial discrimination in schools. However, to successfully challenge such practices alleging racial discrimination, courts require a showing of discriminatory intent on the part of the school official(s).

It is often difficult to prove a showing of direct intent; therefore, to increase the legal options of addressing such invidious practices, one will have to develop alternative legal strategies. Such alternatives may include utilizing circumstantial evidence and/or challenging a school’s deliberate indifference to a racially hostile school environment; courts may draw an inference of discriminatory intent from each of these options. Also, certain provisions of the EEOA do not require a showing of intent and place an affirmative duty on schools to ensure that students with limited English have educational opportunities equal to those with English proficiency.

Enforcement Through Federal Law
The Equal Protection Clause prohibits discrimination by state or local governments on the basis of race. When evaluating a claim alleging racially discriminatory statutes or practices, courts apply a strict-scrutiny analysis, which requires a narrowly tailored statute, policy, or action that achieves a compelling state interest. The Supreme Court of the United States has held that a sustainable racial discrimination challenge must prove that an action or a statute was motivated by discriminatory intent. Accordingly, even though statistical evidence might show that students of color disproportionately receive disciplinary removals from mainstream classrooms, without a showing of discriminatory intent in the imposition of that discipline, a claim based on the Equal Protection Clause will not survive. The Fifth Circuit has construed the Equal Protection Clause to hold that disparate impact alone will not establish a prima facie case of race discrimination. In *Tasby v. Estes,* the court held that official conduct that has a disproportionate impact on a racial group does not alone prove racial discrimination without showing a discriminatory purpose. The *Tasby* plaintiffs alleged that discipline was unconstitutionally administered against African-American students and used statistical evidence to show disproportionate discipline rates. The evidence demonstrated that African-American students received discipline at higher rates and with harsher forms of punishment than other students. Even though the court found the statistical evidence persuasive, the lack of evidence of discriminatory motive caused the prima facie case for racial discrimination to fail. The Fifth Circuit went on to state that the plaintiffs would have satisfied their burden had they shown “arbitrary discipline practices, undeserved or unreasonable punishment of black students, or failure to discipline white students for similar misconduct.”

Title VI of the Civil Rights Act of 1964
Similarly, in *Alexander v. Sandoval,* the Supreme Court held that Title VI only authorizes private causes of actions alleging intentional discrimination. Section 601 of Title VI proscribes intentional discrimination on the basis of race, color, or national origin by entities receiving federal financial assistance. At issue in *Alexander* was whether a private right of action existed to enforce regulations promulgated through § 602 of Title VI, which prohibited facially neutral practices or policies from having a disparate impact. The Court’s rationale in denying that such a right existed was that the regulations went beyond the proscribed conduct of § 601; therefore, the private right of action to enforce § 601 did not include a private right to enforce the regulations. As such, unless a party can trace a school action to a racially discriminatory motive, the party cannot enforce Title VI in court.

Equal Educational Opportunities Act of 1974
The EEOA is a third federal statute prohibiting discrimination that comes in the form of denying individuals an equal educational opportunity. Among other prohibitions, it proscribes schools from segregating and/or transferring students based on race, color, or national origin.
Individuals have a private right of action to enforce the EEOA; however, as with the Equal Protection Clause and Title VI, a showing of deliberate intent is required to initiate a cause of action. Plaintiffs in Castaneda v. Pickard alleged that the school’s bilingual education program was violative of Title VI, and that the school district engaged in discriminatory practices in the employment of faculty and staff in violation of § 1703(d) of the EEOA. In considering this claim, the Fifth Circuit compared § 1703(d) to § 1703(a) and (e), which prohibit the segregation and/or transferring of a student based on race, color, or national origin. The court did not make a detailed analysis of these sections but noted that both § 1703(a) and (e) explicitly state that a denial of equal education happens when the proscribed actions are undertaken intentionally. Therefore, if a public school engages in an action that can be traced to racial animus, the school would not only offend the Equal Protection Clause and Title VI, but also the EEOA.

Alternative Routes
Obtaining direct evidence of intent for an allegation of racial discrimination in the school context may prove difficult. However, courts have considered circumstantial evidence as evidence of intent. Another strategy to reduce racial inequities in schools is to target schools that maintain a racially hostile school environment—such action or inaction on the part of the school violates Title VI. Also, the EEOA includes a section that does not require a showing of intent to make a colorable claim. A party may make a claim under § 1703(f) of the EEOA if a student with language barriers is not receiving services to address those challenges.

Circumstantial Evidence
Courts have recognized the difficulty in obtaining direct evidence of racial discrimination, and therefore look to all relevant evidence, both direct and circumstantial, “to determine whether invidious discriminatory purpose was a motivating factor for the decision.” An inference of discriminatory intent may be drawn from a variety of evidence: (1) a clear pattern unexplainable on grounds other than race; (2) the historical background and sequence of events; and (3) departures from substantive and procedural norms.

Courts have recognized the difficulty in obtaining direct evidence of racial discrimination, and therefore look to all relevant evidence, both direct and circumstantial.

In Mayorga Santamaria v. Dallas Indep. Sch. Dist., a Texas federal district court found that a school principal violated the Equal Protection Clause by segregating English-speaking students of color into ESL classes. Though the court agreed they had direct evidence of intentional discrimination, they went on to consider the presented circumstantial evidence.

The evidence presented in Santamaria showed that certain classrooms were disproportionately Anglo, while others were disproportionately Latino and African-American. The predominately minority classrooms were grouped in hallways away from the Anglo students. The court found that this system of class assignment was unexplainable on any grounds other than race. Looking at the historical background, the court found that not only did the principal begin engaging in these practices since the inception of her tenure, but these discriminatory classroom assignment practices were also in place before the principal’s tenure began at that school. The court also found substantive and procedural deviations when the principal assigned non-limited English-proficient students into ESL classes designed for limited English-proficient students.

Given the challenges in finding direct evidence of discriminatory intent in the school context, one potential litigation strategy is to seek circumstantial evidence that will draw an inference of discriminatory intent. Choosing a school district that has a previous history of race discrimination, as evidenced by complaints to the Department of Education’s Office for Civil Rights and/or desegregation consent decrees, will assist in establishing a historical background of poor race relations. Secondly, choosing a school district that has a disproportionate disciplinary referral rate for students of color and/or that relegates students of color to a particular classroom may speak to a pattern unexplainable on grounds other than race. Because such a pattern demonstrates a disparate impact on students of color, and there is no private right of action on disparate impact alone, it is imperative to include evidence showing a deviation from substantive and/or procedural norms, which may include a fact pattern where students of color receive harsher punishment than the student code of conduct mandates, or instances in which English-speaking students are assigned to ESL classes.

Deliberate Indifference
In Gomiller v. Dees, a federal district court in Mississippi that falls under the Fifth Circuit Court of Appeals held that a student has a right to be free from racial hostility and discrimination in his or her learning environment, and a school district’s deliberate indifference to this right is liable for damages under Title VI.

The fact pattern in Gomiller involved
a teacher who made a racially derogatory remark to a student. The plaintiffs brought a claim against the school district, alleging a violation of Equal Protection, Title VI, and that the action by the teacher created a hostile school environment. In analyzing the Title VI claim, the district court relied on OCR’s interpretation of Title VI in holding that a school’s deliberate indifference to a racially hostile environment is a Title VI violation. The court explained that OCR’s interpretation is afforded a high degree of deference because it is the agency responsible for enforcing Title VI.

A claim alleging a racially hostile environment would have to prove that “(1) there is a racially-hostile environment; (2) the school had actual or constructive notice of the problem; and (3) the school failed to respond adequately to redress the racially-hostile environment.” A racially hostile environment is one where the harassment is “severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges by the recipient.” Liability for damages will attach to a school district under Title VI for a deliberate indifference to such an environment.

In Gomiller, the court found no evidence of a racially hostile environment because the fact pattern involved an incident of one racial epithet, and so did not rise to the level of pervasive or persistent. Also, the school took immediate steps to investigate and remediate the racially hostile environment.

A school that maintains a racially hostile environment will inevitably impede a student’s learning. A Title VI challenge against a school that maintains such an environment may help provide broader remedies that could be applied to the general student population.

EOA § 1703(f)

In addition to the EEOA’s prohibition on discriminatory treatment, § 1703(f) of the EEOA mandates that schools take affirmative steps to overcome limited English-speaking students’ language barriers in order to allow them to participate equally in the school’s educational program. The failure of a school district to remedy students’ language obstacles, regardless of whether there is intent to discriminate against such students, is a violation of the EEOA.

Along with attacking the school district’s bilingual education program through Title VI, the Castaneda plaintiffs also alleged that the program violated § 1703(f) of the EEOA because it emphasized English language development in primary grades to the detriment of other educational areas; this allegedly made the program deficient.

The Fifth Circuit developed a three-part inquiry to determine if a school district’s language remediation program met its obligation under EEOA: (1) Is the program based on a sound educational theory? (2) Do the program and practices actually used effectively implement the educational theory? (3) Does the program enable students to learn English and, to some extent, other subject matter content?

The Fifth Circuit found that while Congress intended for school districts to make a “genuine and good faith effort” in remediating language deficiencies, school districts had a substantial amount of discretion in choosing the type of program to meet their obligations under the EEOA. Therefore, the school district’s language remediation program in Castaneda was not violative of the EEOA. However, the court added that the school district also had a duty to remedy other areas of the student’s education that might also be impared because of the shortfalls caused by the student participating in the language remediation program.

Section 1703(f) of the EEOA could prove useful in cases where a school district has not fulfilled its affirmative duty to assist students who have limited English-speaking abilities to overcome language barriers. Overcoming such barriers enables students to participate equally in educational programming.

In summary, unless the facts will support a claim of intentional discrimination or there is strong circumstantial evidence, a claim of racial discrimination in the school context will not survive. Given the heavy burden of proof required to make a race-discrimination claim, the aforementioned strategies may prove useful for vindicating the rights of students of color and ensuring that they receive equal opportunity to participate in and benefit from the same educational programming as their peers.

Endnotes

4. Washington v. Davis, 426 U.S. 229 (1976); See also Coleman v. Franklin Parish School Board, 702 F.2d 74 (5th Cir. 1983) (Holding an action without a racially discriminatory purpose does not violate the Equal Protection Clause even if it has a racially disproportionate impact.).
5. Tasby v. Estes, 643 F.2d 1103 (5th Cir. 1981); See also Sweet v. Childs, 507 F.2d 675, (5th Cir. 1975) (There is no violation of the Equal Protection Clause without a showing of arbitrary discipline.).
7. 1107.
8. Id. at 1107.
9. Id. at 1107–1108.
10. Id. at 1108. See also Quarles v. Oxford Municipal Separate School District, 868 F.2d 750, 756 (5th Cir. 1989) (stating not only must plaintiffs provide “direct evidence of abuse,” but they must also “account for the many variables at work in the process of disciplining school children.”).
12. 42 U.S.C.S. § 2000d et seq.; see also
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Reforming a broken system is never a quick and easy process, but a new nonprofit in New Orleans has taken great strides in fixing what The New York Times called in 1997 the “most troubled” juvenile public defender’s office in the country. In early 2007, a group of attorneys and youth advocates wishing to capitalize on reform opportunities created by the city’s post-Katrina rebuilding efforts formed a new organization called Juvenile Regional Services, Inc. (JRS). After much planning, hard work, and political wrangling, JRS entered into a contract with the Orleans Public Defenders Office and became the exclusive provider of juvenile public defender services in Orleans Parish, as well as the first stand-alone juvenile public defender office in the country. The founders of JRS formed the organization with the lofty goal of transforming New Orleans’s juvenile public defender system from a broken institution into a model office that not only provided constitutionally adequate representation but also holistic and zealous representation of youth—implementing national standards of best practices for juvenile defense.

Before JRS came on the scene, a youth arrested and charged with a crime in New Orleans was subjected to a system that embodied some of the worst stereotypes of how bad public defender offices operate. High rates of plea bargaining, stipulations waiving important procedural protections, little face-to-face time with overworked attorneys, no investigation on even serious cases, and a generally low level of advocacy on all levels were all too common. Regardless of the outcome of an individual case, the experience was often traumatic and disempowering for the youth being funneled through this broken system. JRS’s structure and policies permitted the organization to correct some of the most serious problems almost immediately. JRS quickly implemented a system of vertical representation in which one attorney follows a child from arrest through trial and into any post-disposition advocacy until the case is closed. This system, including assigning the same attorney to clients with multiple cases, allows attorneys at JRS to develop close relationships with clients and their families, something often crucial in providing effective advocacy. JRS also focuses on the dispositional phase of proceedings as much as on the trial phase, because in juvenile proceedings, providing an array of effective community-based services in an individually tailored dispositional plan can mean the difference between a lengthy jail term and probation, success and failure. A vigorous training program for all staff, a more sophisticated and uniform file-management system, strong motions and appellate practice, and a policy of aggressively pursuing all substantive and procedural avenues for achieving the expressed interest of the client now ensure that all children receive the zealous advocacy they deserve.

The strength of JRS is its staff. Derwyn Bunton, a graduate of the New York University School of Law, leads the charge. He built an organization with a diverse staff of passionate and talented individuals who wholeheartedly believe in the client-centered approach of the organization. With four staff attorneys and two investigators/youth advocates for four sections of court, JRS has the resources to devote the time truly necessary for effective trial preparation, particularly given the decreased number of delinquency cases due to lower juvenile crime rates since Hurricane Katrina. As a result, JRS has kept case load levels just below the Louisiana and NLADA-recommended level of 150 new cases per year per attorney. Furthermore, JRS’s status as an independent nonprofit allowed the organization to raise funds outside of the state-allocated budget in the form of grants and donations, enabling the office to utilize more resources for training and the defense of its clients, and to offer greater compensation in order to recruit competent and committed employees. The goal of the organization is to eventually have a full-time social worker on staff as well as an attorney exclusively devoted to advocacy on collateral issues such as in the area of education and mental health. Once these goals are achieved, JRS will truly be able to implement the holistic approach to juvenile defense that it envisions.

As with all nonprofit start-ups, JRS experienced plenty of bumps in the road. In many ways, the greatest challenge in the organization’s first year was not the traditional challenges involved in fast-paced criminal litigation, but rather those challenges involved in changing the culture of an entire institution. Orleans Parish Juvenile Court previously operated as an institution centered on the convenience of the adults running the system instead of one mindful of the best interests of the child and maintaining the constitutional protections to which each child is entitled. At first, many of the players in the court were not happy about the longer hours and extra work involved in the operation of a truly adversarial system. Trials, preparation of transcripts, issuing of subpoenas, motions hearings, and objections all take time. The system of vertical representation JRS implemented required greater administrative cooperation. For a while, employees of JRS were some of the least popular people in the courthouse. However, in many areas, the initial
resistance has given way to a respect for the way JRS aggressively fulfills its role in the juvenile delinquency system. And of course, JRS has many allies who either laid the groundwork or are pushing through reforms in other areas of the juvenile system. The founders of JRS are all former employees of the Juvenile Justice Project of Louisiana (JJPL), a separate nonprofit with a 10-year history of success working on statewide juvenile justice reform. JJPL has a record of amazing reform triumphs of its own—suing Louisiana twice to shut down the state’s two worst juvenile prisons in Jena and Tallulah. JJPL and other organizations such as the Friends and Families of Louisiana’s Incarcerated Children (FFLIC), a grass-roots parents organization, were also instrumental in passing landmark legislation that is slowly moving the juvenile prison system in Louisiana from one resembling just another version of the punitive adult justice system to a system focused on rehabilitation in small regional facilities offering therapeutic services in a treatment-oriented setting. These organizations and their allies played a significant role in reducing the Louisiana youth prison population from over 2,000 in the late 1990s to approximately 400 in just a few years. Currently, JJPL is suing the city of New Orleans to close down the Youth Study Center, the city’s only juvenile detention center for housing youth awaiting trial.

In another area of reform, the court, under the leadership of Chief Judge David Bell, also began to implement the Juvenile Detention Alternatives Initiative (JDAI), a pilot program funded by the Annie E. Casey Foundation that is designed to reduce the number of youth held in pretrial detention. JDAI uses alternatives to detention such as house arrest, electronic monitoring, day reporting centers, and other programs to ensure that youth safely await resolution of their cases in their communities. Prior to the storm, Orleans Parish’s two juvenile detention centers were routinely filled with up to 130 children, often on minor nonviolent offenses. Now, Youth Study Center is usually well below its 32-bed capacity even though New Orleans’s population has climbed back to over 65 percent of its pre-storm size. This success is in part due to organizations like the Youth Advocacy Project and Report Resources—court programs that provide counseling and case-management services to youth awaiting trial.

New Orleans has a long way to go before all court-involved youth receive the representation and services they need and deserve. However, the efforts of JRS and other organizations and individuals involved in the local juvenile justice system ensure that juvenile justice is one area of rebuilding judged by future generations as an unqualified success.


Hector Linares is a staff attorney with Juvenile Regional Services in New Orleans, Louisiana.

Endnotes


Equal Educational Opportunities

(Continued from page 14)

Alexander at 280 (“§ 601 prohibits only intentional discrimination”).
15. A complainant may still file with the Department of Education’s Office for Civil Rights alleging disparate impact.
17. Id. at §§ 1703(a)(e).
19. Id. at 992.
20. Id. at 1001.
23. Id. at 31.
24. Id. at 2.
25. Id. at 33.
26. Id.
27. Id.
28. Id. at 35.
29. Id.
30. Id. at 36.
32. Id. at 1.
33. Id. at 4.
37. Id.
38. Id.
39. Id. at 4.
41. Castaneda at 1008.
42. Id. at 1010.
43. Id. at 1009–10.
44. Id. at 1009.
45. Id. at 1011–12.
Covenant House Provides Critical Legal Services to Homeless Youth
By Jill Rottmann

Homeless teens arrive at the front door of Covenant House, New Jersey’s Crisis Center in Newark, at all hours of the day and night. A very high percentage of them have been marked by trauma and instability.

Many homeless young adults grew up in state foster care and were subject to multiple placements and transience. Familial dysfunction and neglect were the norm; sexual, physical, and emotional abuse commonplace; developmental delays, learning disabilities, and behavioral problems frequent; and addiction or exposure to parental substance abuse likely. In fact, 70 percent report physical or sexual abuse during childhood, and close to 30 percent have been diagnosed with a mental illness or learning disability that impedes their ability to become independent without long-term professional interventions.

The traumatic impact of such experiences is unlikely to dissipate merely by the passage of time. Without a focused and day-to-day response, any of these risk factors alone can impair independent functioning. Taken together, they may become insurmountable, greatly increasing the probability that homelessness will become chronic.

It is the job of Covenant House to help these youth stabilize their crises and transition to a healthy living environment. A team of highly educated and committed professionals—social workers, nurse practitioners, teachers, vocational specialists, psychologists, drug counselors, and lawyers—work together every day to achieve these goals.

Covenant House New Jersey’s Youth Advocacy Center
Nearly a decade ago, Covenant House’s Youth Advocacy Center (YAC) was founded to focus on providing legal services to homeless youth. Recognizing that homeless youth are often unable to move forward without legal advocacy, the YAC helps them defend their rights in a wide range of matters including illegal evictions, wrongful terminations, denial of Supplemental Security Income (SSI) applications, or sanctions on public benefits.

YAC’s Homeless Education and Disability Rights Project
Since the opening of the YAC, the number of mentally ill and learning disabled homeless youth has grown dramatically throughout New Jersey. As a result, the Covenant House’s lawyers, psychologists, and teachers created the Homeless Education and Disability Rights Project, which is funded by the Interest on Lawyers Trust Accounts Fund of the Bar of New Jersey. The comprehensive advocacy provided by the Project is vital to ensure that these youth receive the public benefits to which they are entitled, and in most cases, these benefits represent their only avenue to avoid becoming a part of the adult homeless population.

YAC, through its Homeless Education and Disability Rights Project, has adopted a three-pronged approach:

Education is inextricably linked to the ability of homeless youth to achieve self-sufficiency. For most, obtaining a living wage is nearly impossible without a high school diploma or GED; tragically, nearly 60 percent of New Jersey’s homeless youth have neither. The problem is more severe for young people with developmental disabilities or those who have been classified with special needs while in school. Statewide, the number of children classified with special education classifications rose 9 percent from the 2001–2002 school year to the 2005–2006 school year; in Essex County, the jump during that same time period was just shy of 22 percent. Nationwide, mental health disorders affect about one in five children, yet only a fifth of these children receive the mental health services they need. The rate of unmet needs is higher for minorities.

Advocacy Within the Educational System
Many homeless teens, despite having been classified as disabled students, do not receive fair and appropriate services from their school districts and find themselves in an educational limbo as their school records are lost in the shuffle. Contrary to the law, schools often refuse to enroll these students without their records. Additionally, many school districts are unaware of homeless youths’ educational rights arising under the McKinney-Vento Act, such as a homeless student’s right to transportation to and from school. Most importantly,
IEPs are poorly constructed. In fact, Covenant House’s YAC attorneys report they have yet to see an IEP that complies with the spirit and mandates of the law and presents a viable transition plan for the youth. The attorneys regularly advocate for school systems to follow the legal mandates required in order to foster effective educational plans for their most vulnerable and needy students.

**Advocacy for SSI Benefits**

Some homeless youth received SSI as children, but are denied continuing benefits when reevaluated under more stringent “adult” criteria upon reaching the age of 18. Many then find themselves without SSI support at a time when they need it the most—when they are completely alone and transitioning to adulthood and have lost the crucial support of the foster care system, the school system, or family assistance. By maintaining and/or obtaining SSI, disabled youth are eligible for health care coverage under Medicaid, employment assistance from the DDD and/or the DVR, and significantly, may be eligible for supportive housing programs. Therefore, Covenant House’s YAC attorneys navigate the complex SSI application eligibility requirements and application process, appealing SSI denials and terminations, and seeking waivers for alleged—but chronically unfounded—overpayments.

**Mike’s Story**

Despite the tireless advocacy and hard-won results that Covenant House’s YAC attorneys achieve for homeless teens, nothing speaks more to their work than an actual story of one of the many young people who benefited from their tireless advocacy.

As a child, Mike was diagnosed as bipolar and was tested to have an IQ of 67. He did not know his father, and his mother couldn’t care for him and ran off when he was 11. Mike was shuffled around to 14 different foster homes until he was dropped off at Covenant House’s doorstep on his 18th birthday.

From the day he arrived, the staff spent a tremendous amount of energy engaging in relentless advocacy for Mike and doing their best to care for him. A social worker and an attorney sought every possible service and benefit for Mike and finally realized some success—fighting appeal after appeal to secure the benefits that entitled him to health insurance, job coaching, a literacy tutor, and a supportive housing program that will adequately care for him for the rest of his life.

During his 23 months at Covenant House, Mike struggled. He saw kids around him coming in, getting jobs, and moving out. He wondered why he couldn’t do the same. Despite his seniority in the program, he never fit in and made few friends. He suffered from the highs and lows of his disorder and saw no one around him doing the same. He knew he was treated differently.

Because of the benefits secured by his Covenant House YAC advocates, Mike now lives in a program with other young adults like himself. He has learned to read and holds a part-time job. Most importantly, he now has a life: friends, a small income, a home, some hobbies. Nothing could please the Covenant House staff more, or provide better proof that our legal advocacy makes a real difference in the lives of the clients that we serve.

**Jill Rottmann** is the executive director of Covenant House in Newark, New Jersey.

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