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Disrupting the School-to-Prison Pipeline

By Marisol Garcia – September 24, 2018

In spring of 2017, the elementary school staff of a small, Massachusetts town called an ambulance to take Ashley—a fourth-grader experiencing an acute mental health crisis—to the local hospital’s emergency room. On the way, Ashley struck an EMT in the face, and as a result, charges were pressed against Ashley for assault and battery. It didn’t matter that her offending behavior was the direct result of a serious illness and occurred while her family and school were actively seeking treatment for her mental health needs—the 9-year-old was summoned to the courthouse for a clerk magistrate hearing in juvenile court.

Ashley’s case is hardly unique. Many children end up in the juvenile justice system as a direct result of an untreated mental illness. This situation is one aspect of a societal trend known as the “school-to-prison pipeline” in which vulnerable children, including those with mental illness, are funneled out of the education system and into juvenile detention. It is also part of another ongoing challenge in our culture—the “criminalization of mental illness,” where behaviors associated with psychiatric conditions are punished rather than treated with medical care.

Health Law Advocates (HLA)—a non-profit, public interest law firm headquartered in Boston—is using legal advocacy to help children with mental illness overcome barriers to treatment and avoid the justice system. HLA began this work more than a decade ago and through its Mental Health Advocacy Program for Kids (MHAP for Kids) has now assisted more than 650 children who were either in, or close to entering, the justice system because they were not receiving the mental health services they needed.

The Beginnings of MHAP for Kids

In 2008, the executive director of HLA was approached by a juvenile court judge concerned that children in his court had a high rate of mental illness and often lacked appropriate mental health care services. His observations were backed up by data: The Center for Mental Health Services Research at the University of Massachusetts Medical School (UMass) reported that among court-involved youth who end up in state detention, 60–70 percent need mental health care; but, only 4–11 percent of youth in Massachusetts courts are referred for mental health services according to a 2006 study by the Massachusetts Society for the Prevention of Cruelty to Children and Boston Children’s Hospital. In response to the issue brought to light by the judge, HLA agreed to provide pro bono representation for children involved with the juvenile court, helping them obtain access to their needed services and often ending their court involvement.
Beginning in 2008, juvenile court judges in Worcester, Essex, Middlesex, and Suffolk counties appointed HLA attorneys to advocate for the best interest of more than 500 children in relation to their access to mental health services. These attorneys were named Mental Health Guardians Ad litem at first but were later appointed as Mental Health Advocates (MHA). When the program was started, the appointments’ duration was open ended and concluded when the judge terminated the appointment. Later, when the state adopted time limits for some juvenile court matters, the appointments were limited to six months with the option of renewing the appointment if further efforts were needed.

The work of the MHAs included, but was not limited to, the following:

- conducting an inquiry into a child’s situation to figure out the child’s needs and appropriate courses of advocacy;
- determining what is in the child’s best interest while respecting the child and parent(s)’ express wishes and communicating with the child’s legal counsel;
- reporting to the court in writing at each court appearance and advocating in court for the client’s position;
- making recommendations to the court, including recommendations for placement based upon opinions offered by reliable collaterals;
- working directly with community-based agencies, including schools, to ensure that the child received appropriate and needed services; and
- regularly engaging in advocacy activities such as: attending special education team meetings to advocate for eligibility for services or improved services; collaborating and advocating with the Department of Children and Families to ensure that placement decisions are informed by treatment providers; referring youth to recommended services not yet accessed; advocating for both eligibility and services from the Department of Mental Health; advocating against the use of juvenile detention while appropriate services are sought; and ensuring that health insurance carriers provide coverage for services.

**Working with Stakeholders to Develop the Right Model to be Sustainable**

In 2012, HLA established its goal of creating a sustainable statewide program to advocate for children who had become, or were in danger of becoming, court-involved due to unmet mental health needs. At that time, the program began a process for systematically consulting with juvenile justice and mental health system stakeholders to refine the program and provide its best chance for long-term success. Numerous entities including the Administrative Office for
the Massachusetts Juvenile Court, the state’s Department of Mental Health, the state’s Probation Services, the Parent Professional Advocacy League, and others contributed many hours to the long-term planning process. During this period, HLA commissioned a scientific study on the impact of the program on children and their families.

Program Evaluation by Boston University School of Public Health

HLA contracted with a research team from the Boston University School of Public Health (BU) to conduct an in-depth, two-year program evaluation of the project. The project director facilitated BU’s work, which included both process and outcomes evaluation.

The process evaluation measured (1) the number of youth referred and enrolled in the program; (2) the number and type of referrals made by the MHAs to services; (3) the duration of MHA involvement in cases; and (4) the number, content, contact method, and duration of encounters MHA’s had with youth and their families.

The outcomes evaluation measured (1) the children’s access to and engagement in mental health services using the Child and Adolescent Services Assessment and a review of relevant records, (2) the children’s involvement in the judicial and emergency mental health systems using court and medical records, and (3) youths’ functioning at school and at home using multiple instruments, such as the Center for Epidemiologic Studies Depression Scale.

The research team conducted a cost-benefit analysis to measure costs associated with MHA activities versus the benefits measured by youth outcome measures. The evaluation team also conducted extensive interviews of the MHAs and the project’s numerous stakeholders to receive general feedback about the advocacy program.

In the final report, data collected by BU indicated that MHAP for Kids serves young people and parents who have a “significantly elevated risk profile.” Of the children served:

- 83 percent are diagnosed with one or more mental illnesses with an average of 3.5 mental health related conditions per child;
- 89 percent experienced a barrier to mental health treatment;
- 63 percent accessed crisis or emergency mental health care services in the past year;
- 44 percent hospitalized for psychiatric care in the past year;
- 37 percent admitted to a residential mental health facility in the past year;
- 28 percent did not attend school at all or missed almost every day in the past three months; and
• 61 percent missed school more than one day per week in the past three months.

The study found that when MHAP for Kids intervenes in a child's life, children experience:

• Improved school attendance—31 percent missing more than one day per week, reduced to 6 percent;
• Decreased use of emergency mental health services—70 percent with recent need, reduced to 24 percent;
• Lowered use of overnight hospital stays—44 percent with recent need, reduced to 14 percent; and
• Reduced use of emergency shelters—10 percent with recent need, reduced to 0 percent.

The study also found that families' (children and parents/guardians) self-reported mental health, family conflict, and family difficulties had improved.

Transitioning to the Family Resource Centers

Because of HLA's extensive consultation period with experts in the juvenile justice and mental health systems, the organization adjusted MHAP for Kids so that it aligned with the state's juvenile justice policy reforms—in 2012, Massachusetts established a statewide network of Family Resource Centers (FRCs) to help divert youth from the juvenile justice system to health care and other services whenever possible. To work with these diversionary services, HLA moved its attorneys from private offices near juvenile courts to offices within the state's three busiest FRCs in Lowell and Lynn, Massachusetts. HLA transitioned from a program serving only court-involved youth to a community-based program serving children with and without open court cases, the idea being that children should not have to enter the justice system to receive help overcoming barriers to mental health care. But, HLA also continued to help children who couldn't connect with MHAP for Kids until they became court-involved.

According to a study of the FRCs by UMass, 32 percent of youth they serve who are in, or at risk of involvement with, the juvenile court have a mental health disability. Working within the FRCs, the MHAP for Kids attorneys are readily available for these children who need help accessing treatment and steering clear of the court system. MHAP for Kids attorneys advocate for children's rights to mental health care within school systems, state agencies, health insurance plans, and the juvenile justice system. MHAP attorneys aggressively protect children's rights and use a collaborative problem-solving approach. They bring parties together to address children's needs using solutions that spread responsibility. For example, they forge cost-sharing agreements among schools, state agencies, and insurers to ensure youth receive needed
services. They also work with juvenile court prosecutors to divert youth from delinquency charges to mental health services. And most importantly, MHAP for Kids attorneys collaborate with families to ensure their voices are heard.

Under the new community-based model, MHAP for Kids accepts clients referred from outside the staff of the FRCs in which they are embedded and provides direct representation for children as opposed to just working for children’s best interests on behalf of the court.

Since the MHAP for Kids attorneys are a limited resource, cases are prioritized when:

- a child is “stuck” in either the hospital or juvenile detention;
- a child is at risk of needing a higher level of care unless appropriate community-based programs are put in place;
- a child is at risk of being suspended and/or expelled from school; or
- a child is at risk of entering the juvenile justice system.

The staff attorneys are available only to assist children with known or suspected mental health challenges and can assist up to 30 children at a time.

**Funding for the Program**

The program has been primarily funded by private foundations. The largest supporter is the Peter and Elizabeth C. Tower Foundation, though other current foundation supporters include the Theodore Edson Parker Foundation, the Cabot Family Charitable Trust, the Mabel Louise Riley Foundation, the Ludcke Foundation, the Gardiner Howland Shaw Foundation, the John W. Alden Trust, the Fish Family Foundation, and the Bennett Family Foundation. Prior grants have been provided by the Klarman Family Foundation, the Blue Cross Blue Shield of Massachusetts Foundation, the C.F. Adams Trust, the Massachusetts Bar Foundation, and the Eastern Bank Foundation. MHAP for Kids joined with a MassHealth Accountable Care Organization, Community Care Cooperative, and a mental health center to receive a grant from the Health Policy Commission. Also, MHAP for Kids’ partnership with the Boston Public Health Commission was awarded a grant from the state’s Probation Service.

From the start, HLA’s has been to replicate and sustain their model for mental health advocacy for children. To further that goal, a key priority for the project has been to create stakeholder “buy-in” through numerous outreach efforts over the years. HLA ramped up these efforts to include intensive outreach to the state legislature—for example, the MHAP for Kids’ director has visited many members of the legislature whose constituents are represented by the program. HLA’s initial legislative goal was to secure funding for the period from February 15, 2017, through June 30, 2017, but it was not successful. However, by doing significant outreach
to the legislature as well as working closely with the Children’s Mental Health Campaign, MHAP for Kids was given a $50,000 earmark in the budgets of both the 2018 and 2019 fiscal years.

**Conclusion**

MHAP for Kids is a lifeline that minimizes children’s exposure to the juvenile justice system and removes obstacles to the treatment and care they need to lead healthy and fulfilling lives. Its vision is to make MHAP for Kids available to every child in the state who can benefit from its services, and the organization hopes that other states will adopt its model for helping vulnerable children reach their potential.

As for Ashley, her treatment providers contacted MHAP for Kids immediately after she received the summons for court. The MHAP for Kids attorney prepared Ashley and her mother for her court appearance and appeared with them before the magistrate to ask that the charge be dismissed. Seeing that Ashley’s primary need was mental health treatment, the magistrate dismissed the charges. With the MHAP for Kids attorney’s advocacy, Ashley got her wish and transferred to a therapeutic day school where she is attending classes successfully and learning new coping skills.

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Partnering with Young Leaders for Change  
*By Darla Bardine and Yorri Berry – September 24, 2017*

The National Network for Youth (NN4Y) is a membership organization that represents runaway and homeless youth programs. For over 40 years, the NN4Y has worked to ensure that the needs of youth and young adults facing homelessness are addressed and that their voices and experiences are respected in the systems and policies designed to help them. Its first members listened to the young people they served as they pushed to include the Runaway Youth Act (predecessor to the current Runaway and Homeless Youth Act) in the Juvenile Justice and Delinquency Prevention Act when it was first passed in 1974.

**Let Them Speak for Themselves**
As NN4Y grew and evolved, it became committed to creating meaningful opportunities for young people to take a part in influencing the national policies that impact their lives and, over the past 20 years, has moved to place their expertise at the center of all aspects of its work. Elevating the best practices for youth engagement has ensured providers on the ground convene youth advisory councils to inform everything they do—from program design and delivery to the way local systems can best support young people and the organizations and public agencies that serve them. This guarantees that environments are welcoming to the youth they serve—whether by providing programming they desire or by placing programs in buildings that are accessible to all youth in a community.

Building on these experiences, NN4Y created its National Youth Advisory Council in 2014 to continue incorporating young leaders in the work to influence public policy and strengthen effective responses to youth homelessness. The council empowers formerly homeless, trafficked, and foster youth to utilize their expertise on youth homelessness in defining policy agendas and educating the public, youth service providers, and policymakers. Most of these youth have interacted with the child welfare, juvenile justice, and/or homelessness systems and use the challenges and successes of their personal journeys to inform and transform existing policies.

The organization has also sought to support and help grow the skills of young leaders nationally. As experts in their own lives, young people with lived experience are the most effective advocates. During NN4Y’s annual national gathering on March 19–20, 2018, in Washington, D.C., young leaders worked to educate providers from across the county on best practices for meaningful youth participation in service design and delivery and advocated directly for policy change. Some of the young leaders played key roles in NN4Y’s Council on Youth Policy and other governance bodies.
Including young leaders as equal partners in shaping NN4Y’s practice and policy work has helped to grow the next generation of adult leaders. Several of these former youth are now leading voices as adults in the national movement to end youth and young adult homelessness. In fact, our experience indicates that to effectively address the issues youth face today, adult leaders and organizations must increase the number of dedicated and trained young leaders who are prepared to take an active role shaping policies and practices in a way that is informed by their lived experience.

**The Power of Firsthand Accounts**
Partnerships, including work with the ABA, have allowed us to witness the impact on children’s rights that happens when youth leadership is done differently—when young people’s leadership development is supported and when they work alongside us to inform and change policies and systems.

We have witnessed a young man from the Democratic Republic of the Congo travel to Brazil to speak at the International Summit on the Legal Rights of Street Connected Children and Youth, to share how, despite the violence his family could face because he chose to stand up for children’s rights, he speaks because he believes youth voices matter.

We have witnessed a young woman who became homeless after aging out of foster care go from wondering if her voice mattered to opening a youth drop in center in her hometown of Detroit and speaking at events around the country, because she knows her voice matters.

We have witnessed a young person who was abandoned at 13-years-old in Alaska after coming out as transgender sit in an office on Capitol Hill with a U.S. senator and senior advisors, braving nervousness to share their story and advocate for legislation and funding to support programs like the one that helped them transition from homelessness to college, because they believe the rights and lives of young people matter.

We have seen a young leader in Chicago influence policymakers to support a new municipal ID because she shared her story of being a homeless teenage mother who could not access a food bank to feed herself and her child because she, like many homeless young people, lacked a valid government ID.

These are just some of the stories that bear witness to what is possible when we foster the potential that already lies within every young person and create meaningful opportunities for them to influence key decision makers who are writing or shaping policies. These young leaders can accomplish what an organization without them cannot.
NN4Y had tried for several years to get the U.S. senator mentioned above to co-sponsor the Homeless Children and Youth Act. In a thirty-minute meeting with the senator, the young leader mentioned shared their experience and accomplished what paid advocates for an over 40-year-old organization could not. Because of that young leader using their voice, U.S. Senator Lisa Murkowski cosponsored the bill, and her staff emailed the young leader the following week to inform them that she had done so.

**Youth Leadership Today**

Young people are the most underutilized resource available to us in our work and in this world. As advocates we must stop asking questions about their competence, passion, or ability to impact and rather ask whether we are willing to see them as more than “the reason we do this work.” We should view them as full partners in this work.

The next time one of us sits with a young person as their lawyer, judge, social worker, or program director, before assuming we know exactly what they need, let’s ask them. The next time they march or advocate for their rights, let’s march and advocate beside them. The next time we revise organizational policies or create strategic plans to better serve them, let’s engage them. The next time they raise their voices and open their minds to say what they need from us to help them help themselves, let’s listen to them. As we move forward as leaders and advocates dedicated to fighting this critical and necessary fight for children’s rights, let’s not do it without them.

Youth leadership today and tomorrow involves more than organizational leaders speaking on behalf of young people across our country and world—it means inviting them into our offices, board rooms, and conferences to consciously cultivate space for their lived experiences, grievances, and proposed solutions. By doing this, we will educate both adults and young leaders and will improve our ability to achieve our mission. Youth leadership today involves not merely giving young people opportunities and platforms to speak but providing space for true dialogue that allows their voices to inform policies and practices and ultimately transform the very systems we are working to change.

When we reflect on the past 20 years of our partnership with young leaders to advocate for children’s rights, we should recognize and celebrate the many accomplishments made on behalf of, and by, young people. Moreover, we must acknowledge and act on one of the greatest opportunities for strengthening our work on children’s rights over the next 20 years: continued intergenerational collaborations between young people and adults, continued support and engagement as today’s young leaders transition to adult leaders, and continuously engaging the next generation of future young leaders.
There is no better time than the present to be moved to action with the nation’s youngest and most vulnerable population. But when we move forward, let us not work to create change only for them but in partnership with them. NN4Y will remain committed to our guiding principles of valuing and empowering youth, and we will continue to support the development of young leaders and ensure that their voices are heard and acted on by practitioners and policymakers. Let us all dare to be leaders audacious enough to believe young people are capable, conscious, and courageous enough to help lead us in achieving many more accomplishments in this field.

*Darla Bardine is the executive director of NN4Y. Yorri Berry is the director of youth engagement for NN4Y.*
“Say What?”—Using Interpreters on Children’s Cases

By Jennifer Baum – September 24, 2018

“Translation is that which transforms everything so that nothing changes.”
—Günter Grass

Much attention has been paid over the years to training lawyers on best practices for representing children, but scant attention has been paid to the proper representation of non-English speaking children. However, recent changes to the United States’ immigration policy and practice have thrust this extra-vulnerable client population into the legal spotlight, and children’s lawyers are increasingly being called upon to provide legal services to clients who require translation or interpretation.

While both terms are often used interchangeably, “translation” refers to the conversion of written materials from one language to another while “interpretation” means the conversion of speech from one language to another. Knowing the difference isn’t absolutely necessary, but it can be important.

All the specialized training in the world will be for naught if your carefully chosen words—and those of your client—cannot be understood due to a language barrier. This is a concern now more than ever as increasingly accessible international travel combined with social and economic forces are fueling unprecedented, sudden, and dramatic shifts in worldwide migration. Just like that, a frightened child from far away, who does not speak English, sits in your office and needs your help.

You need an interpreter.

“When I use a word,’ Humpty Dumpty said, in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’”
—Lewis Carroll in Through the Looking Glass

Where to Find an Interpreter

The Bureau of Labor Statistics notes that interpretation and translation have been growing fields of employment for some years, and that between 2016–2026 they are expected to grow nearly another 20 percent—a much higher rate of growth than most other professions. The languages most in demand include French, Arabic, the Chinese languages, and Spanish, but translators for indigenous languages from Mexico and Central America—such as Mixteci, the Mayan languages, and Zapotec—are also needed. This is especially relevant for attorneys who
represent unaccompanied minors, separated children and parents, asylum seekers, special immigration juveniles, and others entering the United States from southern nations. According to the National Association of Judiciary Interpreters & Translators, most U.S. jurisdictions have a certification process in place for official court interpreters.

But what about out-of-court interpretation? While any practitioner can tell you that the quality of translation and interpretation can vary, the court-certified pool of interpreters can be a good place to start when setting out to find a for-hire interpreter. Many courts maintain lists of official interpreters to choose from if you want to go that route, but you may pay “official” (i.e. higher) rates for this service. If you do not need to use a court-certified interpreter for, say, a client interview in your office or to help you review paperwork from another country, then other resources can include the foreign languages department at a local university (professors of one language may speak multiple languages and may also have capable students who are willing to interpret for low cost or even college credit), local affinity churches, social services agencies, and other places where native speakers of the target language might be found.

Two caveats, though: (1) never rely on family or friends to translate, due to confidentiality concerns; and (2) regardless of the source of the interpretation, always have interpreters sign a confidentiality agreement before beginning an interview.

If an in-person interpreter cannot be located and time is of the essence, a variety of phone translation services are available. However, this often expensive and impersonal option obviously comes with some sacrifice. You should carefully weigh the pros and cons before relying on phone translation, especially when the client is young, but if the choice is between accessing necessary information or going without, the phone can, in many cases, be better than nothing.

There is one more thing to keep in mind, and it is a critical first step toward locating the best interpreter—properly identifying the child’s spoken language. And it may not be a simple matter. A child may have traveled through several countries before arriving in the United States, and her travels may have spanned days, weeks, or even years. She may speak one language at home and another at school. The country’s official language could be yet a third with which she is familiar. This is especially true for countries with a history of colonization, where indigenous and official languages may co-exist even though they are not spoken by all. Best practices do not rely simply on identifying their country of origin, their last habitual residence, or their country’s official language, but will require an investigation into a child’s particular circumstances. Attempt to determine what language the child feels most comfortable speaking and do not assume that naming a language tells the whole story. For example, to my horror I once discovered, twenty minutes into a hearing, that the court-certified Guyanese
Wolof interpreter could not translate into Senegalese Wolof. I only learned about it by speaking to the ten-year-old client in French. And it was his step-father who alerted me, as the child did not volunteer that he could not understand the proceedings—another sobering lesson from that day.

“The difference between the right word and the almost right word is really a large matter—it’s the difference between lightning and a lightning bug.”
—Mark Twain

**Modes of Interpretation**

There are three modes of interpretation. The first and most immediate is simultaneous interpretation. Here, English is translated into the target language (and vice versa) as it is being spoken, resulting in two people speaking at the same time. This is the method most commonly used in court and can be loud and confusing to the uninitiated (which almost always includes clients). This is especially true for bilingual speakers or speakers who know some English and may be distracted by bits and pieces of understood English breaking through the interpretation. The effect is only worse for children, who are more easily overwhelmed than adults. Some courts, including federal courts, use headsets and translators (think the United Nations) to reduce distraction, but this is not yet common in state and local courts.

In sequential, or consecutive, interpretation, the interpreter waits until the speaker has finished, and then converts the statement(s) into the target language. This is a much less distracting method of interpretation and is the far better choice for interviewing children, but it also takes longer than simultaneous interpretation. It is almost always the preferred method for interviewing any client in a small setting, however, because it allows for a more natural and relaxed conversation.

In summary interpretation or translation, the interpreter conveys the gist of what was said, without providing a word-by-word conversion of the language used. This can be useful to set up logistics or to get basic, non-sensitive information where the client’s exact words are not critical to the representation, such as finding out whether the client received a letter. This method might work well with very young children for whom linear conversation might be difficult even in their native language.

**Preparing for an Interview**

While you may feel (and to a large extent are) dependent upon the interpreter, you should remember that it is your interview, not the interpreter’s, and it is you who sets the ground rules. You control the logistics, the content, the pace, and the tone of the interview. Be polite, respectful, and friendly, but in charge.
In an ideal world, consider meeting with the interpreter ahead of time to explain the general subject matter of the conversation; any technical, slang, sensitive, or embarrassing terms that may come up; and to explain your goals to the interpreter. Prepare your interpreter if you reasonably believe that your conversation may turn to sexual abuse, suicide, gang violence, or mental illness.

Provide your interpreter with water, if you can, and a notepad and pen. Let the interpreter know what you expect from him. Instruct him to:

- translate exactly what is said;
- speak in the first person, mirroring what you and the interview subject say and how you say it;
- not touch the interview subject; and
- not have side conversations with the interview subject.

Before beginning the interview, minimize noise and distractions. Arrange the interview so that you are sitting or standing next to the interpreter—never bookend a client between yourself and the interpreter, as this will force the client to pivot his head back and forth throughout the interview depending on who is talking and will impede your ability to bond with your client or interview subject or to communicate non-verbally with him. Although the client may still shift his attention between you and your interpreter even when you are standing next to each other, the shift will be less pronounced, and your client will still be able to keep both of you in view at the same time.

“Say Whaaaat?”
—Bruno Mars in “Uptown Funk”

During the Interview
Make sure to have paper and pen available for the client, who may be asked to spell names or other words. Be respectful of your interpreter and offer stretching breaks, if you can. Interviewing children about difficult subjects can be draining for everyone, but it is twice as draining for the interpreter who must have the same conversation twice.

Remember to speak slowly (not loudly) and clearly, and do not chew gum or have anything in your mouth. The following general rules will increase the effectiveness of your conversation:

- Avoid idiomatic expressions, puns, other wordplay; they usually do not translate well. For example, instead of saying, “It was a piece of cake,” say, “It was easy.”
• Do not say anything you do not wish to be translated. Never assume your interview subject cannot understand any English. Chances are, your client is learning some English here and there, and may, in fact, understand much of what you say even if she cannot yet speak English well herself.

• Give the interpreter time when needed. Speaking in English does not necessarily mean thinking in it, as any bilingual person can tell you.

Because interpretation is always going to involve some degree of subjective word choice, check in with your client more frequently than you would with an English-speaking client to catch mistranslations where you can. Asking your interview subject to repeat back to you, in her own words, the concept you just explained will help ferret out interpretation (or other) issues.

Monitor your non-English speaking client more closely and more frequently for body language or facial expressions that might indicate confusion.

It is a good idea to try to limit your sentences to just one idea or phrase each. This is not a natural way of talking, even to most children, and may require some practice. If a lengthy explanation is needed, consider breaking it down into idea chunks: instead of “Please remember, when we go to court, that not every adult there will agree with your goals,” you could say, “There is something I want you to remember. [Pause for interpreter.] There will be many adults in the court room. [Pause for interpreter.] The other adults may not agree with us.” Whenever feasible, preview the sentence in your head before saying it to reduce your complex sentences to simple ones. There are a number of ways the sentence “Opposing counsel has filed an affidavit in opposition” could be translated. But you could make it easier and less susceptible to mistranslation by saying, “The lawyer for the government filed a paper. [Pause.] That paper disagrees with our paper.”

You should also try to avoid “time travel” in one sentence. “Despite what she told me last week, your aunt now cannot be here until next Tuesday” will be easier to translate this way: “Do you remember I spoke with your aunt last week? [Pause.] And that she said she would be here today? [Pause.] Well, it turns out that something changed. [Pause.] She can’t be here until next Tuesday.”

As a rule, maintain eye contact with the child, not with the interpreter. This will be reassuring to the child and will reinforce that you are the person in charge, not the interpreter. During the interview it is not rude, but a good practice, to act as if the interpreter is not in the room. It would be overbearing to instruct the client not to look at the interpreter, but by maintaining eye contact with the client, you will naturally hold the client’s attention longer, even while the interpreter is speaking. Some shifts in attention are to be expected, however, and the client
should not be made to feel pressure either way. As mentioned before, sitting next to the interpreter will make it easier for the child to see you both.

Finally, after the interview is over, remember to thank your interpreter and arrange for prompt payment, if that applies. They have done difficult and critical work for you. You can also debrief with your interpreter about impressions she may have gotten about the client’s level of education, regional accent, etc. to help get a better picture of your client’s circumstances.

For more tips and information about interpretation and translation, you can visit the websites for the National Association of Judiciary Interpreters & Translators and the National Center for State Courts’ Consortium for Language Access in the Courts’ Guide to Translation of Legal Materials.

Jennifer Baum is a professor of clinical legal education at St. John’s University School of Law.
Looking Grimm for Transgender Students?

By Andrew Piltser Cowan – April 12, 2017

Last week, the Supreme Court sent Gavin Grimm's case back to the Fourth Circuit for reconsideration in light of the Trump administration's new "guidance" that they will no longer construe Title IX to require admission of transgender students to their gender-appropriate facilities. This article will discuss the change in guidance, why the court issued the summary remand, and what Justice Gorsuch on the court would mean for future proceedings in this or similar cases.

First, the procedural history. The legal issue in this case is whether Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681, requires schools to admit transgender students to the restroom and locker facilities that correspond to their gender identity, rather than their sex assigned at birth. Neither the statute nor the regulations expressly address this question. However, in 2016 the Civil Rights divisions of the United States Departments of Education and Justice released a joint "Guidance" document on the treatment of transgender students in federally-funded schools. In Administrative Procedure parlance, "guidance" is a formal statement of how the agency intends to apply its regulations. The 2016 Guidance interpreted Title IX and the implementing regulations to require that students be admitted to the facilities corresponding to their gender identity, and not required to use either the facilities corresponding to their sex assigned at birth or single-user facilities.

That gets us back to the Gavin Grimm case. In the lower courts, Grimm's lawyers had urged the courts to give "Auer deference" to the Obama administration's guidance. See Auer v. Robbins, 519 U.S. 452 (1997). Auer deference means that if a federal regulation is ambiguous, the agency in charge of the regulation gets to decide how it applies. It's similar to the more-familiar Chevron deference, which is the same idea but for ambiguous acts of Congress. The District Court had declined to grant deference to the 2016 guidance because it thought that the regulation clearly referred to "sex" as distinct from gender identity. G.G. v. Gloucester County School Board, 132 F.Supp.3d 736, 746 (E.D.Va. 2015). As such, the regulation was unambiguous and needed no Guidance to interpret it. The 4th circuit reversed and granted Auer deference. In other words, it said that the Obama administration's 2016 guidance was controlling—the beginning and end of the analysis. G.G. Ex. Rel. Grimm v. Gloucester County School Board, 822 F.3d 709, 719–23 (4th Cir. 2016).

In the School Board's certiorari petition, it invited the Supreme Court to reconsider Auer entirely—that is, to decide that agencies would no longer get deference to interpret their own regulations. The Supreme Court had declined that invitation, but
had agreed to hear the case on two specific questions. The first was whether Auer deference should attach to "an unpublished agency letter that does not carry the force of law and was adopted in the context of the very dispute in which deference is sought?" The second question was whether the Obama administration's interpretation of Title IX should be given effect, either because of Auer deference or because of the Court's own judgment. Even under Auer deference, the Obama administration's guidance might not be controlling if an exception to Auer deference applied, or if the regulation was held to be unambiguous.

Now, the guidance on which the 4th circuit hung its hat has been reversed. The new Trump administration guidance doesn't actually take any position on how Title IX applies to transgender students—it just says that the Obama administration guidance is withdrawn and rescinded for further study. This changes everything, though. Grimm had argued that the courts should follow the Department of Education's guidance, but that guidance has now been reversed! Even if the Trump administration guidance affirmatively said, "Title IX doesn't protect transgender students," one of the exceptions to Auer deference is if the challenged guidance is "inconsistent with prior agency practice." See G.G., 822 F.3d at 722. It seems pretty clear that the Trump/DeVos guidance (or lack of guidance) reversing the Obama/Duncan guidance is inconsistent with prior agency practice. The absence of a consistent agency interpretation pretty much kills any hope of Auer deference, thus throwing the interpretation back to the courts.

Now, lawyers and court-watchers know that the Supreme Court hates being the first appellate court to decide an issue in a case—they really want a district court and a federal appellate court to have weighed in before they even decide whether to get involved. In fact, they'd really prefer if multiple appellate courts have heard the same issue in different cases and didn't agree about how to resolve it. Here, the change in agency practice has completely upended the case. The district court issued its own interpretation of Title IX because it thought Auer deference didn't apply in the first case, but the Fourth Circuit never did—its opinion was all about Auer. So, rather than using its precious resources to take a first look at an issue of regulatory interpretation, the Supreme Court sent the case back to the Fourth Circuit for reconsideration.

Now the Fourth circuit will take a second look at the case. Instead of deciding whether Auer deference applies, which is all they did before, they now must decide whether Auer deference still applies—and assuming it doesn't, they must decide whether the school's policy violates Title IX. Then, whichever side loses the new round can ask SCOTUS to take up the case again. Of course, it's also possible that the Trump Administration will promulgate new regulations to address the question directly. If they do, the Title IX issue is moot—the statute gives the government broad discretion to regulate, and the entire case has been about how the existing regulations apply. Grimm's legal team also made an Equal
Protection argument, but the courts below have largely avoided that question. To make matters more complicated, Gavin Grimm will graduate high school in May of 2017. However, since his complaint seeks damages for past harm as well as injunctive relief, his graduation should not render the case moot.

What happens if the case goes back before the Supreme Court now that Neil Gorsuch is a justice? Well, if the Auer question is still in play, Gorsuch is pretty solidly on record as hating Chevron and Auer deference, so we would expect him to oppose any ruling that the deference applies. However, that issue will very likely be out of the case by the time it returns to the court. On the substantive issue, Gorsuch is in a minority of federal appellate judges in having held that a trans woman could be fired for vague "safety concerns" involving her use of the women's restroom. See Kastl v. Maricopa County Community College Dist., 325 F.Appx. 492, 494 (2009). That's probably bad news for his vote in a hypothetical G.G. II.

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PRACTICE POINTS

Five Tips for Successfully Interviewing Your Child Client

By Cathy Krebs – September 5, 2018

Interviewing our child clients is foundational to legal representation, but it can be challenging. Below are some quick tips to help you improve this essential skill.

- **Build a trusting relationship:** Be friendly, empathetic, honest, and never make a promise that you cannot keep. Have multiple client meetings to help build the relationship.
- **Use clear language:** Avoid negatives, use simple sentence structure and language, avoid sarcasm, use the present tense, ask your client to use her own words to repeat what you just said, and be clear about your role.
- **Explain what is happening in your client’s case:** Often the lawyer can be the best source of information for their client about what is going on in a case. Be sure to explain the court process, the roles of others within the court system, the timing of a case, and the various possible outcomes in your client’s particular case.
- **Be respectful:** Listen actively, notice non-verbal communication, and take your cues from your client whether it is paying attention to the language he uses or not forcing eye contact if it makes him uncomfortable. Also ask permission to take notes and explain why notes might be important. Importantly, understand that what you feel is most important might not be most important to your client.
- **Pay attention to what matters to your client:** Ask her who are the important people in her life. Who would she call if she got into trouble? What does she need? You should avoid assumptions. Listen actively so that you are better able to identify what is most important to your client and why. Often our clients are the best source of information about their cases and can identify what they need; we just need to listen.

If you want to learn more, check out the following video, notes, and audio programs:

- **Interviewing the Child Client**—See why this award winning video narrated by the actress Amy Breneman has been viewed almost 90,000 times and counting
- **Interviewing the Child Client Video Teaching Notes**
- **Counseling Children and Youth in Times of Crisis: Tips to Achieve Success and Avoid Pitfalls**—Found towards bottom of the page
- **Interviewing and Counseling a Child Client**—Found towards bottom of the page
Cathy Krebs is the Committee Director of the Children’s Rights Litigation Committee.

Utilizing Florida’s New Permanency and Transition Planning Guidance
By Jessalyn Schwartz – August 27, 2018

In August, Florida released a statewide memorandum regarding changes to their policies and practices for transition-aged youth and young adults in state care. Youth aging out of care face many issues associated with transition and often face consequences, such as homelessness, because of inadequate support and planning in the years before they turn 18 or otherwise age out. Florida’s plan implements new ideas and focuses for transition planning that may be helpful to advocates and policymakers in other states.

Florida’s new policy begins transition planning for youth at 13-years-old, with a formal transition plan required by age 16 and preparations for judicial review hearings starting at age 17. The transition plan is developed through collaboration between a youth or young adult and a Transition Facilitator, a staff person designated specifically for this process. The youth will lay out his or her goals and will decide which services will be needed for a successful entrance into adulthood. The youth will work with the facilitator to identify adult supports and what roles they will serve in the process. Florida utilizes a form that poses questions about short and long-term goals and practical concerns such as housing, health insurance, employment, education, financial literacy, and obtaining a driver’s license, and this information is used to create the official transition plan. Adult supports are invited to be involved in the planning meetings, and youth are provided with further professional support in areas such as independent living.

The vital changes in this policy involve the quality of the relationship between the youth and their assigned staff supports. Florida suggests that facilitators engage in varied formal and informal meetings with their youth, including home visits, scheduled meetings, court appearances, and events in the community or at school. A positive, open, and supportive relationship is seen as the cornerstone of a successful transition planning relationship, and youth are to be encouraged to think critically about their futures while the professionals assess how to serve the youth and their wellbeing as a whole. Florida uses a review of all records, including mental and physical health, education, and juvenile justice, and creates a strengths and needs analysis to best serve the youth. Staff are required to provide youth with access to all essential records and resources as appropriate at each age milestone during planning, such as how to monitor their credit, manage a bank account, and obtain health and car insurance.
Assistance with financial aid, employment, and other post-graduate planning is also a part of the new procedures. Florida is also implementing strict filing requirements for the transition plan, with regular updates and provisions surrounding a youth’s attainment of the age of majority.

The memorandum provides detailed definitions and explanations of the new policy. Advocates may find this information of use when examining their own state agency’s transition planning policies and related law, as well as in representation of transition-aged youth who may require additional support in planning for their futures once they leave the foster care system.

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