TABLE OF CONTENTS

Articles »

School Closing Victory—The Fight to Save National Teachers Academy
By Katherine Gladson and Candace Moore
It has been very difficult for communities to push back against proposed school closures.

Twenty Years of Progress in Advocating for a Child’s Right to Counsel
By Amy Harfeld
There is much work to be done before the promise of full legal rights for dependent children is realized.

Addressing the Access to Justice Crisis in Rural America
By Robin Runge
The lack of access to information and enforcement of legal rights in rural communities has significant repercussions, including possibly violating state and federal law.

There Is No Justice as Long as Millions Lack Meaningful Access to It
By Robert Grey Jr.
For far too many Americans, equal access to justice remains more of a promise than a practice.

Practice Points »

Five Ways Lawyers Can Build Resilience in Child Clients
By Eliza M. Hirst
As an advocate, you have the important power to change not only the trajectory of their lives but their mental development too!

Five Things about Trauma that Children’s Lawyers Should Know
By Eliza M. Hirst and Cathy Krebs
It is important to have a basic understanding of and recognize how trauma impacts child clients and their behavior.
ARTICLES

School Closing Victory—The Fight to Save National Teachers Academy

By Katherine Gladson and Candace Moore – March 22, 2019

If Chicago Public Schools (CPS) decides to close your school, you get two minutes. Whether you are a parent, a student, or a community member, you only have two minutes to explain all the ways that your school benefits its students and community. Two minutes to explain why CPS should not do this. Two minutes to tell your story. When CPS decided to phase out top-rated National Teachers Academy (NTA) Elementary School, many tried as best they could to tell CPS exactly what was wrong with its plan.

The 3rd Ward where NTA is housed has had more closures and more displacement of African-American economically disadvantaged students than any other ward in Chicago . . . [NTA] has risen from the lowest possible CPS ranking to the absolute highest possible CPS ranking in just three years. We’re one of only 18 schools out of over 600 in CPS that serve the African-American community with this academic and community profile. . . . Are we set to take this away[?] —Hannah El-Amin, NTA parent.

My black daughter looks around her [class]room and sees other black students who are just as smart and high achieving as she is. She is growing up in an environment where being smart and black is the rule, not the exception. This is what NTA gives to black students like my daughter, and this is what CPS’s racist plan wants to destroy. — Elisabeth Greer, local school council president.

NTA is not an asset, it is not a location. It is students, families, and staff. The true asset of NTA is the members of its thriving community. . . . Our children are not disposable. Their educations matter. Their bodies matter. Their Black lives matter. —Autumn Laidler, NTA fourth grade teacher, speaking on behalf of NTA staff members.

In February 2018, despite overwhelming objections, CPS approved a plan to phase out NTA Elementary School and open a new high school in its building to meet the demands of a fast-growing, affluent neighborhood just north of NTA’s boundary. This was the first time that CPS proposed closing a high-performing and well-attended school. To challenge this glaring injustice, the NTA community knew two minutes would never be enough.

On the last day of school in June 2018, the Legal Assistance Foundation (LAF) and Chicago Lawyers’ Committee for Civil Rights (CLC), along with private attorneys from Eimer Stahl LLP, filed a five-count complaint in state court, challenging CPS’s violations of the Illinois Civil Rights...
Act and Illinois School Code. Shortly thereafter, we filed a motion for a preliminary injunction to stop CPS from implementing its plan while the case was pending. CPS filed a motion to dismiss, and as the new school year started, we entered into an expedited briefing schedule, racing to halt the plan before too much damage was done to the school. Two weeks before winter break and before students would apply to the new high school in NTA’s building, parents and community members filled a courtroom in downtown Chicago to hear the court’s ruling on the preliminary injunction and motion to dismiss.

From the bench, the judge announced that CPS’s motion to dismiss was granted in part, but the claim based on the Illinois Civil Rights Act survived and provided a basis for a preliminary injunction to immediately stop the district’s plans. The ruling marked the first time since enactment of the No Child Left Behind Act (NCLB) that a court has intervened to stop CPS from closing a school.

**Background on School Closings**

School closings have become widespread in urban school districts nationwide. The most common rationales offered are low academic performance, low enrollment, budget concerns—or a combination of these factors. To date, litigation efforts across the country have been largely unsuccessful in stopping school closings. See, e.g., *Smith v. Henderson*, 944 F. Supp. 2d 89 (D.D.C. 2013); *McDaniel v. Bd. of Educ. of City of Chi.*, 2013 WL 4047989 (N.D. Ill. 2013).

Successful cases have been few and far between. See, e.g., *John B. v. Bd. of Educ.*, 95-1559 (Ill. App. Ct. Aug. 7, 1995) (ruling based on Open Meetings Act violations).

**Legal framework.** School closings were introduced as a sanction for low academic performance under NCLB. 20 U.S.C. § 6311(b)(7)(A). Under NCLB and now under the Every Student Succeeds Act (ESSA), states must create accountability standards to assess and monitor school performance. Under NCLB, which was in effect until 2015, if a school did not make adequate yearly progress, it could be subjected to a closure. Many of the mass school closings were undertaken while NCLB was still in effect. By comparison, ESSA emphasizes the responsibility of school districts to provide support for underperforming schools. However, both NCLB and ESSA require states to create their own implementation plan for complying with federal requirements. Thus, the actual mechanics of accountability and closure largely take form under state law and local school district policy.

**Chicago school closings.** In Chicago, CPS has closed nearly 200 schools since 2002. The vast majority of these schools served African American students and students from low-income households. Historically, CPS has closed schools for either low academic performance or low enrollment. Illinois—like New York—has codified specific procedural requirements for “school actions” (closings, phase-outs, consolidations,
boundary changes, etc.) within its school code. The Illinois School Code requires CPS to create guidelines for selecting schools for a school action. For example, in 2013, when CPS closed a historic 49 schools in one year, CPS’s guidelines stated that schools with low enrollment (also called “under-utilized” schools) could be selected for closure. Once CPS has published its guidelines, it must convene at least two public meetings and one public hearing prior to approving a proposed school action. These are where students, parents, and community members get two minutes each to tell CPS whether or not a school should be subjected to a school action. Once the public meetings and hearing are complete, the Board of Education votes whether to approve the closure. Throughout this process, it has been very difficult for communities to push back against proposed school closures.

The impact. Until recently, research on the outcomes of school closings was very limited. The University of Chicago Consortium on School Research (CCSR) and others found that the only way students potentially benefit from a closing is if they are then assigned to a significantly higher-performing school. CCSR also found that academic harm starts during the year that the closure is announced and that the majority of students displaced from closed schools in Chicago do not later attend significantly higher-performing schools. In May 2018, a month before LAF and CLC filed our complaint, CCSR published a new study on school closings that integrated qualitative and quantitative data to analyze the multifaceted outcomes of the 2013 school closings in Chicago. CCSR’s findings were significant, and they included several negative impacts on students:

- long-term negative impact on math scores and short-term negative impact on reading scores for students displaced from closing schools;
- short-term negative impact on reading scores for students attending welcoming schools (schools that are designated to enroll students who are displaced from closed schools);
- increased reports of bullying and fighting at welcoming schools and development of an “us” versus “them” mentality between students and staff from closing schools and welcoming schools; and
- an absence of sufficient support from CPS at welcoming schools during the transition process.

In all, the CCSR study substantiated harms that students, parents, and community members have reported for years. CCSR’s newly released findings played a critical role in our case regarding the expected harm of CPS’s plan for NTA.
National Teachers Academy
NTA is—and was at the time CPS announced its plan to close it—among the highest academically performing elementary schools in Chicago. It is located at the site of the former Harold Ickes Homes, a public housing project on Chicago’s near south side. It serves over 750 students, making it “efficiently utilized” according to CPS standards. About 77 percent of its students are African American, and about 72 percent come from low-income households. NTA also has numerous wraparound supports that are integral to its success. NTA has a health clinic located inside its building that assists students and community members. Families have multiple low-cost options for before- and after-school child care. Students also have regular access to a swimming pool and recreational facilities on site through a partnership with the Chicago Park District. All extracurricular activities, including sports teams, are offered to students for free. In short, it is the kind of school that every neighborhood desires.

Despite all of this, in the spring of 2017, CPS decided to close NTA so that its building could be used to open a new neighborhood high school. Under CPS’s plan, NTA’s youngest students (kindergarten to third grade) would be transferred to nearby and recently expanded South Loop Elementary, and NTA’s remaining elementary grades would phase out over time (i.e., no more fourth grade one year, no more fifth grade the next year, and so on)—as high school grades phased in (adding ninth grade the first year, tenth grade the second year, and so on)—until the school enrolled only high school grades.

This plan was not the first time that NTA students faced displacement. In 2005, CPS enacted a boundary change that removed students who lived in nearby public housing from South Loop Elementary and sent them to NTA. In 2012, NTA was a designated welcoming school for students who were displaced from a different school closing. In 2013, even though it was not a designated welcoming school, NTA received many students who were displaced by the 49 school closings across the city. Each of these actions created challenges that the NTA community worked successfully to overcome.

LAF and CLC started working with members of the NTA community during the summer of 2017, after CPS first announced its plan. Together we advised parents and community members about the administrative school action process. We drafted public comments to CPS’s guidelines for school actions on behalf of NTA parents. We helped prepare testimony for the community meetings and the public hearing. We testified at the final public hearing and submitted a 30-page statement, opposing the plan, for the hearing officer’s consideration. Our written statement outlined many of the legal violations that were later alleged in our complaint. Last, we spoke at the Board of Education meeting prior to the final vote and urged board members not to approve the plan. Unfortunately, in February 2018, CPS’s Board of Education formally approved the plan to phase out NTA, and we started preparing for our next fight—in court.
Going to Court: Greer v. CPS

On June 19, 2018, LAF and CLC filed a complaint against CPS on behalf of seven African American students, four African American parents, and two community groups—Concerned Parents of NTA and Chicago United for Equity. Our named plaintiff, Elisabeth Greer, is an NTA parent and president of the local school council. Our student plaintiffs range in ages from 6 years old to 13 years old, covering several different grade levels and different academic programs within NTA (e.g., gifted, neighborhood, open enrollment). Concerned Parents of NTA is a group of parents, grandparents, and community members who had opposed the plan to phase out NTA since its announcement. Chicago United for Equity is a citywide organization that conducted a months-long racial equity impact analysis of CPS’s plan and fought for CPS to consider options for a high school that would not place such a high burden on African American students.

Our complaint set forth the violations described below. About a month after filing our complaint, we filed a motion for a preliminary injunction, which included sworn affidavits from six different local and national experts; affidavits from our parent and organizational plaintiffs, articulating the harm that this plan had and would continue to inflict; and about 1,000 pages of additional exhibits in support of our motion.

Violation of the Illinois Civil Rights Act. Illinois’s Civil Rights Act prohibits any “unit of State, county, or local government” from “utiliz[ing] criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin.” It provides individuals with a cause of action under state law for discrimination claims that are based on a disparate impact theory (an important state-level protection given that individuals are not able to advance a disparate impact theory under Title VII).

Our complaint stated that CPS violated the Civil Rights Act by relying on racially discriminatory criteria to justify NTA’s closing when it used “attainment” as the sole metric to determine that NTA was a lower-performing school than the school designated as the welcoming school. The School Code permits a closing only when CPS can provide displaced students with a “higher performing” school. However, both NTA and its proposed welcoming school, South Loop Elementary, had the same performance rating (Level 1+) based on CPS’s performance policy, which uses multiple metrics of performance. Even CPS’s own reports found that there was largely “no statistical difference” between the performance of NTA and South Loop Elementary. Because state law mandates that children from a closed school attend a higher-performing school, and because South Loop Elementary was rated the same as NTA, CPS’s guidelines set out a tie-breaker rule. Under the tie-breaker rule, CPS relied exclusively on attainment scores from standardized tests—the district’s lowest-valued metric and
one with the largest racial achievement gap—to decide whether a welcoming school qualified as higher performing than the closing school. When it used attainment scores as the only criteria for this determination, CPS found that South Loop Elementary was higher-performing than NTA and, therefore, that NTA could be closed and its students could transfer to South Loop.

We presented evidence, through two expert witness affidavits, that using attainment metrics instead of other less racially biased metrics (such as measures of student growth) puts schools like NTA, that serve mostly African American populations, at an extreme disadvantage. More specifically, attainment metrics focus on students’ scores at a given point in time and are largely predicted by students’ access to resources. On the other hand, growth metrics measure student progress from one point in time to the next and better capture the contributions made within the school. Using attainment to justify school closings would result in majority African American schools being disproportionately classified as lower-performing, and therefore, subject to closure as compared with non-majority African American schools. CPS’s reliance on attainment data in this context was also a significant departure from its typical practice of valuing student growth metrics over attainment when rating schools. For example, in calculating school performance ratings across the district, CPS places three times as much weight on growth metrics as compared with attainment metrics. In sum, CPS’s use of attainment to determine which school was “higher-performing” when deciding to close NTA had the effect of discriminating against African American students.

**Violations of the School Code.** The Illinois School Code also requires CPS to prepare a transition plan to support the academic, social, and emotional needs of affected students. The transition plan must provide students with a “comparable level of social support services” that were available at the closing school.

In NTA’s case, we challenged four different violations of the School Code. Specifically, we argued that

- CPS failed to include criteria for a school phase-out in its guidelines,
- CPS failed to comply with its own guidelines,
- CPS failed to provide NTA students with a higher-performing welcoming school; and
- CPS’s transition plan failed to satisfy the requirements of the School Code and provide NTA students with a comparable level of social support services.
In support of these counts, we submitted two affidavits from local experts—one of whom is a researcher for the Chicago Teachers Union. We also relied on the affidavits of our plaintiffs to highlight all of the supports that NTA provides to its students, which would not be available at South Loop Elementary.

**Injunctive relief.** Under Illinois law, to obtain a preliminary injunction, we had to establish (1) a likelihood of success on the merits, (2) irreparable injury for which there is no adequate remedy at law, and (3) a right in need of protection. As noted above, we submitted voluminous evidence in support of our motion for a preliminary injunction. With the assistance of experts and the support of outside research, including the CCSR study, we presented evidence of the academic harms, social-emotional harms, and community-level harms associated with CPS’s plan. We also presented evidence of the financial harms that would have an impact on NTA as its budget was annually reduced, due to its declining enrollment, during the proposed phase-out. Finally, our plaintiffs’ affidavits articulated in specific terms how this plan would harm their students. Within our plaintiff group, there were students who

- had already been displaced from other CPS closings and would be displaced again;
- were siblings and would be separated between NTA and South Loop Elementary during the phase-out period of the plan;
- would lose access to NTA’s unique wraparound supports; and
- would endure the effects of budget cuts during NTA’s phase-out.

**Oral argument.** In October 2018, the court heard oral argument—in front of a courtroom packed with NTA supporters—regarding our motion for a preliminary injunction and CPS’s motion to dismiss. For the first time in nearly a year and a half, our plaintiffs and the NTA community had longer than two minutes to tell their story. For the first time, CPS was forced to answer questions publicly to the judge about its plan. For the first time, many members of the NTA community felt heard.

**The Decision in Greer v. CPS**
On December 3, 2018, the courtroom was standing room only as the court announced its decision regarding our motion for a preliminary injunction and CPS’s motion to dismiss. The court granted our motion for a preliminary injunction, finding that the plaintiffs established a likelihood of success under the Illinois Civil Rights Act, but it dismissed the counts related to the Illinois School Code.
The court found that the plaintiffs adequately alleged that CPS’s use of attainment scores as the sole basis for a tie-breaker constituted a criteria or method of administration that had the effect of discriminating against African American students. Further, the court noted that CPS did not disagree that attainment metrics were used in the performance determination between NTA and South Loop Elementary, nor did CPS offer any contradictory evidence that attainment metrics place African American students at a disadvantage. The court also found that the plaintiffs adequately alleged a causal connection between CPS’s criteria (attainment) and the discriminatory effects on African American students.

Turning to harm, the court found that the plaintiffs demonstrated a likelihood of success on the merits of their claim that NTA students would be harmed emotionally, academically, and by the lack of services available at South Loop Elementary. Further, the court found that the plaintiffs had a likelihood of success in proving that an equally valid and less discriminatory alternative to attainment was available. Specifically, CPS could have used growth metrics or its own performance policy to make this determination in a less discriminatory way. Finally, the court cited several of our expert affidavits and found that the plaintiffs had adequately alleged irreparable harm, including “injuries ranging from direct academic harm, loss of funding and loss of current services.”

The court concluded by noting that while it agreed with CPS that the School Code provides the district with broad discretion in school phase-outs and closings, “that discretion is not unfettered. Where the phase-out . . . is based upon impermissible criteria, courts have the authority, indeed the duty, to enjoin said action.” This case is the first time that a court has enjoined a CPS school closing since the inception of No Child Left Behind. It is also the only decision nationwide, which the authors are aware of, that granted a preliminary injunction to plaintiffs in a school closing case based on a racial discrimination claim.

**NTA Is Here to Stay**

The court’s ruling on the preliminary injunction was announced during the late afternoon. Hours later, CPS issued a press release stating that it would not appeal the court’s decision. A few hours after that, we received confirmation that CPS was abandoning the plan altogether. NTA will stay open, and CPS will explore other ways to address concerns about high school programming in the nearby communities.

**Conclusion and Key Takeaways**

Partnerships—at every level—were the most crucial element of this victory. We formed a true partnership with our clients and the NTA community, and we supported each other’s leadership every step of the way. LAF, CLC, and our pro bono partner, Eimer Stahl LLP, each brought different perspectives and strengths to our legal team. Moreover, many of our experts were
identified through existing relationships with our organizations or with NTA community members.

Other key takeaways:

- **Getting involved early.** Frequently, there is a short time period between a school district’s final decision to close a school and the actual closing. The fact that LAF and CLC were involved with NTA at the earliest stages of this process, before the decision was final, gave us a deeper understanding of the facts, evidence, and legal issues related to CPS’s plan.

- **Establishing harm.** In other school closing cases, plaintiffs have struggled to establish the harm of a potential school closing. The value of CCSR’s recent report and our expert witnesses cannot be overstated. With this support, we were able to break down harm into separate and specific categories—academic harm, social-emotional harm, programmatic harm, etc.

- **Storytelling.** Our clients and the NTA community at large worked tirelessly to tell the story of NTA and CPS’s plan throughout the course of our representation. Their dedication at the administrative level (public meetings and hearing) and overall efforts to raise awareness about this plan and its harm to their community gave our legal team a cohesive and well-developed administrative record and clear message to CPS throughout our representation.

*Katherine Gladson* is an education law staff attorney at the Legal Assistance Foundation in Chicago, Illinois. *Candace Moore* is a senior staff attorney for the Education Equity Project at the Chicago Lawyers’ Committee for Civil Rights.
Twenty Years of Progress in Advocating for a Child’s Right to Counsel

By Amy Harfeld – March 22, 2019

Recent disturbing headlines focusing on the trauma and injustice of separating children from their parents at the border ushered unexpected but welcome public scrutiny of the obvious injustice of these vulnerable families facing complicated and intimidating legal proceedings without an attorney. Outrage greeted the word of Judge Weil, who casually declared, “I’ve taught immigration law literally to 3-year-olds...” (login required), as well as by John Oliver, who exposed the preposterous notion of children representing themselves or appearing without counsel. The desperation of these families and the profound gravity of the cases have illustrated to the wider public what advocates and attorneys have long understood—matters as basic as the preservation of family integrity and the risks of being placed in state custody demand representation by a well-trained, highly competent attorney.

But immigration proceedings are entirely different from child welfare cases. Different court system. Different set of laws and procedure. Different standard of proof. Different jurisprudence and precedents. Different political implications. Yet, the risk of a child being thrown into state custody against the child’s will without any understanding of his or her rights, any chance to be heard, and with no understanding or control of where or with whom he or she will end up is strikingly similar.

Fortunately, at least in the child welfare context, the past 20 years have brought sweeping change and a rapidly evolving consensus that children victimized by abuse or neglect and facing court proceedings are entitled to representation by an attorney. This piece reviews some significant milestones in the movement toward achieving a definitive right to counsel for children in dependency cases, reviews the current status quo, and marks the path toward establishing an incontrovertible right to counsel for children in dependency cases.

Background
According to the Adoption and Foster Care Analysis and Reporting System (AFCARS), just under 700,000 abused or neglected children spent time in foster care in 2017. Every one of those children was involved in a court proceeding to formally place the child in this form of state custody. How many of them understood their legal rights during those cases? How many were counseled on their options and asked what they wanted? How many had a well-trained attorney zealously advocating for their position? And how many were left to navigate this terrifying and overwhelming judicial process without the benefit of legal counsel? What does
this number look like compared with the status quo prior to 2000? The answer is complicated, though it should not be.

Twenty years ago, there was no case law recognizing the fundamental constitutional due process rights of children in child welfare cases. There was no federal law requiring legal representation for dependent children. There was no federal money available to help pay for children’s legal representation. National standards and guidelines for best practice in this field were still evolving. There was a dearth of research on the costs and benefits of providing children with attorneys during their cases. And fewer than half of states were doing a decent job of providing counsel on their own.

The landscape now is far more hospitable to children’s rights in these cases. Powerful case law has begun to identify the due process rights at stake for children in their dependency cases. State laws in all but about a dozen states now require some form of legal representation for children in abuse and neglect cases in at least some circumstances. The research documenting the positive personal and financial outcomes of providing quality legal representation for children is clear. Brand-new federal policy allows for federal IV-E dollars to be drawn down to reimburse states for up to half of the cost of providing legal representation to children. But federal law still does not require legal representation for children in dependency cases. Although great strides have been made in the field, that matter is currently left to the vagaries of state law.

Advancements in Right to Counsel
In 2002, the nonprofit entity Children’s Rights, Inc., the group behind most of the class action child welfare lawsuits against state systems, filed the landmark federal case *Kenny A* in the Eleventh Circuit in the Northern District of Georgia. In 2005, the court in that case found that under state law and the state’s constitution, “children have fundamental liberty interests at stake in deprivation and TPR proceedings . . . includ[ing] a child’s interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit.” The court found that—because a child’s fundamental liberty interests were at stake, there existed a significant risk of erroneous decisions, and the government functioned as parens patriae—it was in the state’s and child’s interest to appoint an attorney for the child. The Supreme Court of Georgia later validated this finding of a child’s statutory and state constitutional right to counsel, and pointed toward a federal constitutional right to counsel as well, at least in termination of parental rights cases.

In 2007, First Star released the first Report Card on a Child’s Right to Counsel, analyzing, comparing, and grading each state’s laws relating to legal representation for children. The report concluded that 21 states earned a D or F grade and only 5 earned an A. There have been
three editions of this report card issued and a fourth edition is expected to be released by First Star and the Children’s Advocacy Institute in 2019. The most recent edition, the third edition, of the Report Card, published in 2012, found that the number of states earning a D or F grade fell by a quarter to 16 and that the number earning an A tripled to 15. The next edition will most certainly reflect further progress. The National Coalition for a Civil Right to Counsel makes available regularly updated information on its interactive national map on the right to counsel for children, among other areas of civil representation.

Research by Chapin Hall in 2008 found compelling evidence that children in one Florida county with high-quality attorney representation spent less time in foster care, achieved permanency more quickly, and saved the state money in administrative costs and services, compared with children who were not represented by attorneys. In 2009, the University of Michigan Law School received a multimillion-dollar multiyear grant from the U.S. Children’s Bureau to create the National Quality Improvement Center on the Representation of Children in the Child Welfare System (QIC-ChildRep). This represented the first significant federal investment in this arena and resulted in the first empirically based evidence on the best way for legal representation to be delivered to children. One of the top recommendations of the QIC in 2016 was that “[f]ederal leadership should ensure that all court-involved children are represented by an attorney in child protection proceedings.” Not only did the QIC recommend legal representation for all children in dependency cases, the QIC advocated for adoption of the best practices reflected in the ABA Model Act Governing Representation of Children in Abuse, Neglect, and Dependency Proceedings, discussed below.

The National Association of Counsel for Children (NACC) released its Recommendations for Representation of Children in Abuse and Neglect Cases in 2001, following the ABA’s 1996 Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. Definitive national standards for best practice in this field were adopted in 2011 by the ABA in the Model Act Governing Representation of Children in Abuse, Neglect, and Dependency Proceedings. The model act provides an ambitious framework for states to use in adopting laws to ensure the protection of children’s legal interests in their child welfare cases. It also sets clear benchmarks for children’s attorneys in training, qualifications, performance, caseloads, and ethics standards to ensure best practice in the field. The ABA has played a critical role in the movement toward a right to counsel for children through four decades of well-respected work through the ABA Center for Children and the Law. In addition, the Children’s Rights Litigation Committee of the ABA Section of Litigation has helped to engage practitioners and advocates nationwide through convenings, videos, and compelling multimedia presentations, among other means.
The U.S. Children’s Bureau has signaled that these various developments reveal a tipping point requiring a change in federal policy. In early 2017, the Children’s Bureau released an information memorandum identifying “widespread agreement in the field that children require legal representation in child welfare proceedings” and conveying an acceptance of a federally recognized right to counsel for children. Among other things, this memorandum found evidence to support that legal representation for children, parents, and youth contributes to or is associated with:

- increases in party perceptions of fairness;
- increases in party engagement in case planning, services, and court hearings;
- more personally tailored and specific case plans and services;
- increases in visitation and parenting time;
- expedited permanency;
- and cost savings to state government due to reductions of time children and youth spend in care.

Subsequent public statements reinforced this conclusion by the administration through Children’s Bureau Associate Commissioner Jerry Milner and Special Assistant David Kelly.

A Game-Changing Policy Change
At the tail end of 2018, the Children’s Bureau issued a groundbreaking policy change, opening up Title IV-E entitlement funding to help reimburse states for the costs of legal representation for children. It also covers legal representation for parents. Although children and their parents often have distinct legal positions and sometimes adversarial interests in child abuse and neglect cases, most stakeholders understand that when parents are well represented, outcomes for children may improve as well. This policy development reflects the overwhelming consensus in favor of high-quality legal representation for all parties in dependency cases, and it marks an important civil rights victory for children in having their rights endorsed by federal government—with the dollars to back it up.

Implementation of this policy change will not be easy, but it will benefit states that take it on, as well as the parents and children directly affected. States that already provide attorneys for children in these cases now have some support, as well as an unprecedented opportunity to move their systems closer to the best practices outlined in the ABA model act. It also provides a tempting financial incentive for those few states that do not yet provide legal representation to children to get on board. In fact, states that do not currently provide attorneys for children in these cases and that do not take up this match are leaving federal money on the table—a result few state legislators should take kindly to.
Further Advancing the Right to Counsel for Children
The progress described above to achieve a universal right to counsel for children in dependency cases is remarkable. Yet, the struggle is far from over and there is much work yet to be done before the promise of full legal rights for dependent children is realized. Although the new policy from the Children’s Bureau endorses a right to counsel for children and allows access to federal funds to pay for it, there is no federal law requiring states to provide such representation.

Amending federal law. The first and only federal law to directly address the representation of children in child welfare cases is the Child Abuse Prevention and Treatment Act (CAPTA), passed in 1973. The Senate report on the first iteration of CAPTA includes testimony by Dr. Henry Kempe, widely considered to be one of the pioneers of the modern children’s rights movement: “It is proposed that in every case of child abuse a lawyer be nominated by the court to protect the child’s interests.” (Senate report at 201.) Dr. Kempe further testified as follows:

Few would contend that the potential danger to a child’s right to freedom and life is less in situations involving the adjudication of delinquency than in an abusive family situation (indeed, the child’s very life may be in danger, and therefore, every dependency case may be a capital case). It is for this reason that we contend that the juvenile in cases of suspected abuse requires the assistance of counsel to: “cope with the problems of the law, to make a skilled inquiry into the facts, and to insist on the regularity of the proceeding.”

Senate report at 202.

When CAPTA was first adopted in 1973, only two states, Colorado and New York, required legal representation for children in dependency cases (Senate report at 249).

CAPTA does not require legal representation for children. It requires only that

a guardian ad litem, [. . .] who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings—

(I) to obtain firsthand, a clear understanding of the situation and needs of the child; and
(II) to make recommendations to the court concerning the best interests of the child.

This version of the law, adopted in 1996, runs contrary to the legislative intent noted above. The congressional record from that time appears to reflect the financial constraints of states in receiving or locating adequate funding for legal representation for children and attempts to provide a lower-cost option for states to fulfill this function through a volunteer lay advocate such as a court appointed special advocate (CASA).

Current law sets the federal floor to require only a non-attorney guardian ad litem (GAL) or CASA to “represent” the child by conveying to the court what the GAL or CASA deems to be in the child’s best interest. There is no federal requirement that ensures children are counseled as to their legal rights and options, that their voices and positions are heard, or that they enjoy the safety and protection of the attorney-client privilege. Given the trajectory on this issue over the last decades, federal law has some catching up to do. CAPTA must be amended to return to the original legislative intent and reflect the tides of state laws and federal policy to require that children receive legal representation, not just a lay GAL.

Most children’s lawyers would likely agree that CASAs provide critical information to the court and fulfill a unique and valuable role in the child welfare cases in which they serve. But even the best-intentioned volunteer CASA is no substitute for an attorney. Only attorney representation creates and protects the critical attorney-client privilege necessary for full transparency by children. Only representation by an attorney properly allows for critical court functions such as filing motions, appeals, subpoenas, and objections, and examining witnesses. And only legal representation allows for the amplification of the child’s voice and wishes, provision of legal counseling, and protection of the child’s rights. It is important to note that the attorney representation needed in these cases is for the children, and not for the “representatives” of those children. Programs that provide attorneys to lay guardians or CASAs, rather than directly to children, will likely not qualify for these valuable new federal dollars and may ultimately be deemed inadequate and inefficient in the aftermath of this policy change.

The role of a child’s attorney and the role of a CASA or GAL are distinct yet complementary. Children are best served when both are involved. Any zero-sum game pitting CASAs against children’s attorneys is false and promotes a disservice to the very children at the center of the core missions of both roles.
Other opponents of advancing reform in CAPTA have relied on arguments against creating additional unfunded mandates within the beleaguered statute’s requirements of states. With the adoption of the policy change allowing for federal entitlement dollars to help cover these costs, that argument has now essentially been rendered moot.

Federal legislative reform could be achieved through CAPTA reform. But that is not the only possible legislative vehicle. There are other legislative avenues that might be pursued, including Title IV-E itself. Now that IV-E may be used to pay for children’s legal representation, it could explicitly require such legal representation. Frankly, it has always been the most logical legislative pathway to address legal representation, as it addresses the administration of judicial proceedings in child welfare.

**Recognizing a constitutional right to counsel.** Just as federal law must now work to catch up to the rapidly evolving understanding on legal representation, federal courts must address this question once and for all to conclusively establish a constitutional right to counsel for all children in abuse and neglect cases. NACC visually tracks the legislative evolution on this topic in this graphic. The *Kenny A* case provides a blueprint for future cases and is sure to be used as a foundation to expand the holdings more broadly.

There have been some other efforts to advance case law on this topic since *Kenny A*, none as successful, but they are helpful in illuminating a path forward. In Connecticut, children’s attorneys filed suit against the state, alleging that systematic inadequate representation by court-appointed counsel violated the rights of the children involved in child protection cases. In 2009, the Children’s Advocacy Institute filed a class action in California alleging that the constitutional and statutory rights of Sacramento County’s foster children were violated by caseloads approaching 400 per attorney and 1,000 per judge. The ruling in this case never reached the substantive issues of the case; rather, it dismissed the case under the doctrine of abstention. Obtaining decisive case law broadening the findings of *Kenny A* nationwide is still aspirational.

Lawyers understand how the loss of liberty through placement in state custody triggers constitutional due process concerns. *Gideon v. Wainwright* overcame federalist objections to establish a conclusive right to counsel for criminal defendants. *In re Gault* extended that right to juvenile defendants. The primary distinction between children facing placement in state custody through foster care and children facing incarceration is the distinction between an alleged perpetrator and a victim. Surely, children who have suffered abuse or neglect and who may be involuntarily placed in state custody ought, at the very least, to have the same rights and protections as
criminal defendants. Indeed, children placed in state custody in child welfare cases can remain in state custody, separated from parents, siblings, and other family, for up to 18 years and can be—and often are—moved from placement to placement without notice or an opportunity to weigh in. Quite a severe sentence for doing nothing other than being the victim of abuse or neglect.

Conclusion
The past 20 years have marked a seismic shift in the landscape regarding the right to counsel for abused and neglected children. Countless attorneys, advocates, judges, nonprofits, academics, foundations, journalists, and state and federal government officials have played critical roles in educating the public and keeping this issue moving forward. The overwhelming majority of states now require some level of legal representation for children in child welfare cases. Research has validated the benefits of legal representation, both for children and for the state. Arguments against federal legislative reform have largely been neutralized, and CAPTA is up for reauthorization as this goes to print. The federal government has issued clear policy in favor of a child’s right to counsel and provided a mechanism to help pay for it. In fact, so many voices across the spectrum have now weighed in in favor of a child’s right to counsel that a handful of states, Congress, and the Supreme Court are now conspicuous outliers and on the hook to catch up.

Amy Harfeld serves as the national policy director and senior staff attorney for the Children’s Advocacy Institute at the University of San Diego School of Law.
Addressing the Access to Justice Crisis in Rural America

By Robin Runge – September 26, 2018

We have an access to justice crisis in rural America. A disproportionate percentage of people living in poverty live in rural communities in the United States. At the same time, there are very few attorneys providing legal services in rural communities, and their numbers are dwindling. In fact, in many rural counties in the United States, there are no practicing attorneys, and in some rural states, residents must travel hundreds of miles to the nearest legal services office or private firm attorney. Similarly, public defenders are scarce in rural America, often traveling circuits, similar to ways in which judges travel circuits and sit in courthouses just one day a week in certain communities.

Recently, the Nebraska State Bar Association reported that 12 rural counties in the state have no lawyers, leading individuals who need a lawyer to have to travel up to 200 miles to find one, assuming they could afford the travel costs and the costs of hiring an attorney. Rebecca Larson, Wanted: Rural Lawyers, Need a Job? Many Rural Communities Are Desperate for Lawyers, 23 Nat’l Jurist 12 (Jan. 2014), available at http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0114/#/12.

http://www.prairiebizmag.com/event/article/id/18342. Of the 357 towns in North Dakota, only 85 have an attorney, according to the North Dakota Supreme Court. Id.

In addition, a high percentage of the few attorneys practicing law in rural America are aging out of the practice of law without plans or prospects for carrying on their practices. The average age of attorneys has increased in the last five years to 49 years old nationwide. Legal Profession Statistics, supra. In Iowa, more than 100 small-town attorneys are nearing retirement and have not identified successors. Larson, supra, at 12. In South Dakota and North Dakota, small communities with one or two attorneys face a crisis when the attorneys retire. Kristi Earon, Rural Areas Struggle with Lack of Lawyers, MPRnews (Dec. 12, 2011), http://www.mprnews.org/story/2011/12/12/rural-lawyers. In Minnesota in 2010, it was predicted that a high percentage of attorneys would retire from the practice of law in rural areas in the next 10 years. Eric Cooperstein, Go Rural, Young Lawyer!, Lawyerist (June 27, 2014), http://lawyerist.com/small-town-jobs-lawyers/#more-13109.

The lack of access to information and enforcement of legal rights in rural communities has significant repercussions, including possibly violating state and federal law. It means people with disabilities go without access to public benefits or employment. Without adequate access to legal assistance, individuals living in rural areas face risk of eviction (see Marilyn Hotch, Beth Gallie & Michael W. Mullane, Rural Access—An Innovative Program in Western Maine, 9 Me. B. J. 186, 187 (1994) (describing how a project designed to address a gap in legal services in Maine provided emergency legal services to a woman living in a rural area without access to transportation that helped her avoid eviction from her home and how 33 percent of cases handled were housing, mostly eviction related)) and victims of domestic violence are at greater risk of severe injury (see Lisa Pruitt, Place Matters: Domestic Violence and Rural Difference, 23 Wis. J. L. Gender & Soc'y 347 (2008) (describing how victims of domestic violence in rural areas are at a higher risk of severe physical injuries and that courts may be less accessible and are less aware of the rights of victims of domestic violence)).

Research has indicated that in situations where there is a known lack of access to justice, those in positions of power use the lack of a rule of law to exploit vulnerable populations. See, e.g., Blaine Bookey, Enforcing the Right to Be Free from Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti, 14 CUNY L. Rev. 255, 257 (2011) (describing how the absence of the rule of law and dependence resulting from economic dislocation increased the risk of rape).

The lack of attorneys living and practicing in rural communities is an acute access to justice issue because it means low-income individuals in those communities are more likely not to have access to their most basic needs. Rural America is disproportionately poor. In 2012, 46.5 million people in the United States lived in poverty, defined as a family of four with an income
of $23,850 or less. See Carmen DeNavas-Walt et al., U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2012, at 13 (2013), available at https://www.census.gov/prod/2013pubs/p60-245.pdf. This represents 15 percent of the total population. Id. The rate of poverty in rural communities is 17.7 percent, in contrast to 14.5 percent in urban areas. Id. at 16. Of the 353 most persistently poor counties in the United States, 85 percent of them are rural. See Trip Gabriel, 50 Years into the War on Poverty, Hardship Hits Back, N.Y. Times (Apr. 20, 2014), http://www.nytimes.com/2014/04/21/us/50-years-into-the-war-on-poverty-hardship-hits-back.html?_r=0.

In states like New Mexico and North Dakota, rural poverty intersects with race, reflected in even higher poverty rates in counties where Native Americans make up much of the population. See Debra Lyn Bassett, Distancing Rural Poverty, 13 Geo. J. on Poverty L. & Pol’y 3, 11 (2006) (more than one out of every four rural African Americans, Hispanics, and Native Americans are living in poverty). A lack of legal resources more negatively impacts individuals living in poverty in rural communities because they do not have the resources to travel to larger communities and pay private attorneys employed by large law firms.

Although each state has a nonprofit legal assistance organization that receives federal funding to provide free legal services to the poor, their offices and attorneys are primarily based in the urban communities in the states and they have seen consistent, drastic cuts in funding over the past 20 years. (For example, Legal Services of North Dakota is the Legal Services Corporation–funded legal assistance organization in North Dakota. It employs a total of eight attorneys for the entire state with offices in Bismarck, the second-largest community in the state; Fargo, the largest city in the state; and Minot, one of the other largest cities in the state. They also have staff in offices in Belcourt and New Town. LSND Staff Directory, Legal Servs. of N. Dak. (2009), http://www.legalassist.org/?id=50.)

In addition to access to civil attorneys, the lack of public defenders in rural areas of the United States has a drastic impact on basic constitutional rights. In these rural states, the nearest public defender or prosecutor may be hundreds of miles away. This leads to possible violations of the U.S. Constitution when individuals charged with a crime are not represented or are represented by attorneys who are unfamiliar with criminal law or judges are forced to delay proceedings for many weeks until a public defender is available. Gideon v. Wainright, 372 U.S. 335 (1963) (holding that the Constitution requires states to provide defense attorneys to criminal defendants charged with serious offenses who cannot afford lawyers themselves).

State bar associations, states, and law schools are attempting to address this crisis. First, law schools located in rural states are increasingly providing opportunities for law students to experience and learn firsthand about the benefits of practicing in a rural community. Similar to
any other career choice a law student makes, without direct exposure to the practice of law in a rural community, it is hard for a student to make an informed decision about whether that experience is best for him or her. Other so-called alternative career paths, such as public interest law, have similarly benefited from law-school-sponsored opportunities to work in the field that have led to an increased commitment by law students to pursuing such a career. (For example, The George Washington University Law School and Georgetown Law Center both have invested significant resources in providing information, training, and educational opportunities for their students in public interest law. See, e.g., Public Interest and Pro Bono Overview, Geo. Wash. Univ., http://www.law.gwu.edu/Academics/Publicinterest/Pages/PublicInterestandProBono.aspx (last visited May 14, 2014); Office of Public Interest and Community Service, Geo. Law, http://www.law.georgetown.edu/careers/opics/index.cfm (last visited May 14, 2014).)

Second, states and law schools are beginning to provide financial support to students who commit to practicing law in a rural community in an effort to address the costs of setting up a practice and any educational debt that may prevent a recent law school graduate from considering a rural practice. Again, efforts to increase participation in public interest careers provide a good example of how such incentives can be successful. Starting in the 1990s, law schools began developing loan forgiveness programs for recent graduates who chose to accept positions in public interest law. See Phillip G. Schrag & Charles W. Pruett, Coordinating Loan Repayment Assistance Programs with New Federal Legislation, 60 J. Legal Educ. 563, 587 (2011).

Today, the majority of law schools have some form of loan forgiveness program for public interest alumni. Although these programs vary, they generally agree to pay for the graduate’s law student loans for a specified period of time as long as the student remains employed in public interest law with a net income under a specific amount. Id. In addition, Congress recently passed legislation that provides loan forgiveness to law students to remain employed in the public interest law field for a minimum of 10 years. Id. at 595.

These programs have been credited with enabling more lawyers to pursue public interest law careers. Applying this experience to efforts to increase recent graduates’ practice of law in rural areas, law schools could provide grants to a small number of students who choose to enroll in the law school with the specific stated goal of practicing in a rural community that can go toward paying for a portion of their tuition, offering summer grants for students who choose to work as an apprentice for an attorney in a rural community, and providing a loan forgiveness program for students who choose to practice law in a rural community upon graduation (with another possibility being to utilize the existing public interest loan forgiveness programs to include rural practice in the definition of public interest law).

Third, law schools can and should provide essential learning opportunities designed specifically for law students and lawyers to successfully undertake a career practicing law in a rural community. Courses that incorporate the skills of opening and running a small legal business, entrepreneurial skills including outreach and marketing, and how to run a general practice are all important to equip law students with the necessary skills and experience. In addition, provision of clinical legal education and externships for course credit can provide students with invaluable experience practicing law under the supervision of a faculty member or practicing attorney in the community. Moreover, upon graduation ongoing, accessible, low-cost research assistance, continuing legal education, and networking opportunities including a mentorship program can provide new attorneys practicing in rural communities with a web of resources and support. Law schools in rural states that are interested in having their graduates stay and practice in those states should consider integrating these structures.

Robin Runge is an associate professor lecturer at The George Washington University Law School, where she has taught public interest lawyering since 2004, and a member of the American Bar Association Commission on Homelessness and Poverty.
There Is No Justice as Long as Millions Lack Meaningful Access to It

By Robert Grey Jr. – August 20, 2018

Equal access to justice is a pillar of our justice system and a core American value. In fact, it has been fundamental to our self-understanding since even before we were a nation. It informs the principle of righteousness in the Iroquois Confederacy’s Great Law of Peace: “Each individual must have a strong sense of justice, must treat people as equals and must enjoy equal protection under the Great Law.”

It is embodied in one of the chief principles of the Mayflower Compact drawn up in 1620 by the Pilgrims, calling for “just and equal laws.”

It is enshrined in the preamble of the Constitution: “We the people of the United States, in order to form a more perfect union, establish Justice . . . .”

It is engraved on the façade of the U.S. Supreme Court and has been repeatedly cited by the justices who served there, none more eloquently than Justice Lewis Powell: “Equal justice under law is not merely a caption on the façade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

And it is invoked by Americans of all stripes when they recite the Pledge of Allegiance and proclaim we are a nation “indivisible, with liberty and justice for all.”

For far too many Americans, however, equal access to justice remains more of a promise than a practice, particularly in the civil justice system where the right to counsel is not guaranteed. Most people who cannot afford to hire a lawyer cannot secure free or even low-cost legal assistance. They are on their own in a system designed by lawyers for lawyers. This has grave consequences for them and for the judges and court administrators charged with maintaining the orderly functioning of our court system.

This significant shortfall between the civil legal needs of low-income Americans and the resources available to address these needs is what is known as the “justice gap.” Last year, the Legal Services Corp., which I am privileged to serve as a member of its board, issued “The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans.” The report, prepared in conjunction with NORC at the University of Chicago, documents the volume of civil
legal needs faced by low-income Americans and assesses the extent to which they seek and receive help. Among its eye-opening findings:

- Approximately 60 million Americans qualify for LSC-funded civil legal aid because their incomes are at or below 125 percent of the federal poverty guideline—currently $15,075 for an individual and $30,750 for a family of four.
- Seventy-one percent of low-income households experienced at least one civil legal problem in the past year.
- One in four low-income households experienced six or more civil legal problems, including 67 percent of households with survivors of domestic violence or sexual assault.
- Eighty-six percent of the civil legal problems faced by low-income Americans in a given year receive inadequate or no legal help.
- Low-income Americans seek legal help for only 20 percent of their civil legal problems, and are more likely to seek help for problems that seem more obviously legal, like civil legal problems related to children and custody (48 percent) and wills and estates (39 percent).

Another aspect of the justice gap especially important to the judiciary is the number of unrepresented litigants in the nation’s courts. The National Center for State Courts estimates that in almost 75 percent of civil cases in state courts, one or both parties are unrepresented. The numbers are even higher in some types of high-volume, high-stakes cases. In many American courts, for example, more than 90 percent of tenants facing eviction have no lawyer, as are more than 90 percent of parents in child support cases. Kentucky Chief Justice John Minton has described the situation as a “pro se tsunami hitting the nation’s courts.”

Forcing litigants to represent themselves compromises their access to justice and burdens the court system. Cases involving self-represented parties frequently reach the courts as litigation, when—had counsel been involved—they would have been resolved long before that point. And once they are in court, they take up significantly more time, as judges and clerks must explain information commonly understood by lawyers. The resulting delays affect everyone who needs access to the court system.

More importantly, self-represented litigants are often deprived of true justice since many objectively meritorious claims fail for lack of legal expertise, particularly when unrepresented parties are opposed by experienced attorneys. The wave of self-represented litigants thus threatens the core mission of the courts: delivering fair and timely justice. As Nebraska Chief Justice Michael G. Heavican observed while serving as the president of the Conference of Chief Justices: “The large number of unrepresented citizens overwhelming the nation’s courts has negative consequences not only for them but also for the effectiveness and efficiency of courts.
... Frontline judges are telling us that the adversarial foundation of our justice system is all too often losing its effectiveness when citizens are deprived of legal counsel.”

The LSC, the ABA, and other stakeholders in the legal community are doing their best to narrow this justice gap by developing innovative technology, encouraging and supporting pro bono participation by the private bar, and undertaking other initiatives. These are useful, but the country’s civil legal aid network remains chronically underfunded from all sources, particularly from the federal government. The current administration, in fact, has the last two years called for defunding LSC completely, but Congress has resisted this call, and last year increased LSC’s funding by $25 million to $410 million. That figure is still well below what is needed and does not even match the $420 million appropriated by Congress in 2010. From 2007 to 2016, funding per eligible person decreased from $7.54 to $5.85, and at its current level, funding for LSC is less than one-tenth-thousandth of the federal budget. It is no wonder that the World Justice Project ranks the United States dead last (36th out of 36th) among high-income countries on the question of whether people can access and afford civil justice.

We are not keeping full faith with a founding principle of our country. There is a reason that equal justice is a core American value. It is essential to our democracy. When a majority of people believe they cannot secure a lawyer or have meaningful access to the court system to resolve their disputes fairly and justly, they lose confidence in the rule of law, the foundation of not only our justice system but of our democracy as well. As the legendary jurist Judge Learned Hand observed: “If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.”

Robert J. Grey Jr., a senior counsel with Hunton Andrews Kurth in Richmond, Virginia, retired from the active practice of law in March 2016. From 1998 to 2002 he served as chair of the ABA’s House of Delegates and was the first African-American to be an officer of the association. He was elected president of the ABA in 2004, the second African-American to hold the position. In 2009, Mr. Grey was appointed by President Barack Obama, and confirmed by the Senate, to serve on the Board of the Legal Services Corp. In 2012, Grey was elected president of the Leadership Council on Legal Diversity.
PRACTICE POINTS

Five Ways Lawyers Can Build Resilience in Child Clients

By Eliza M. Hirst – March 14, 2019

Nearly all children involved in the child welfare and juvenile justice systems have experienced chronic trauma and toxic stress and as a result experience significant changes to their brains and bodies. The science behind resilience from traumatic life events is complicated, but the formula is simple. In order to become resilient, a child needs one trusted adult (more are obviously better!). As a child attorney, you have a significant opportunity to help children become resilient from their traumatic experiences.

Below are five tips to help your child clients heal and thrive:

1. **Exercise Universal Precautions.** Assume all of your clients have experienced trauma. Often times children may be triggered by a sight, smell, sound, touch, or certain words that flood their senses and sometimes their actions or reactions may be beyond their control. Understanding that trauma has a profound impact on children can help you advocate for your child clients regarding their behavior or needs.

2. **Build Connections.** Permanency should always be at the forefront of all child welfare advocacy. However, even if permanency is not an option in the short term, child attorneys can use the simple mathematical formula of: traumatized child + trusted adult = resilience. The healthy connections with adults that children develop will help them heal from traumatic experiences. Seek out family members or important people in children’s lives (coaches, teachers, foster parents, social workers, and the child attorney) to help them become resilient. Not only will this help them to learn to trust, it will actually help children grow new healthy neural connections in their brains!

3. **Help Kids Become Confident.** Find out what they are good at! So many decisions in the child welfare system are beyond children’s control. Oftentimes, children who experience trauma feel like it is their fault they are in foster care. Finding extracurricular activities that help kids find out what they are good at builds self-confidence and healthy brains. This also ties back to the legal obligation and importance of fostering normalcy.

4. **Ask Before You Touch.** Human touch, high fives, fist bumps, and hugs create powerful healthy chemical reactions in the brain. However, for child clients who have been sexually or physically abused, touch can be very scary or threatening. If you are excited, proud, or wanting to console a child client make sure you ask the client before you lean
in for a high five or a hug. Asking for permission gives the child control and time to
decide whether he or she feels safe with physical contact. It also helps to build trust and
healthy brains!

5. **Help Your Child Client Fix Mistakes.** Everyone makes mistakes, but often times when
our child clients make mistakes they are removed from their school or their school
placement. As a result of so much instability, many child clients do not know how to
repair relationships or make a situation right. Talk to your child clients about what they
could do differently next time, asking for help, and the power of apologies. These types
of conversations not only build relationships, they also help children to navigate some
fundamentally important life skills that they may not always receive in their families, in
school, or in court. The power of an apology or a discussion about how to repair a
relationship may positively impact permanency, school placement, and connections for
your child client.

Every healthy encouraging conversation you have with your child client is a step toward helping
him or her become resilient. Remember as their advocate, you have the important power to
change not only the trajectory of their lives but their brains too!

*Eliza M. Hirst* is a deputy child advocate at the Office of the Child Advocate in Wilmington,
Delaware.
Five Things about Trauma that Children’s Lawyers Should Know

By Eliza M. Hirst and Cathy Krebs – March 11, 2019

Most children in the child welfare system have experienced multiple traumas (often stemming from the event that triggered a child abuse hotline report and the resulting separation from family). Lawyers need to understand the trauma that their child client has experienced, how that trauma impacts behavior, and how the intervention of the judicial system can cause or exacerbate trauma.

This list was written by lawyers who are not trauma experts and reading this list will not make you an expert in trauma nor enable you to diagnose trauma. But it is important to have some basic understanding of trauma and recognize how it impacts child clients and their behavior.

Here are five things about trauma that children’s lawyers should know:

1. Trauma can lead to substantial disruption in both a child’s brain and developmental milestones. Chronic trauma has “a pervasive effect on the development of mind and brain,” and children who experiences chronic trauma can “experience developmental delays across a broad spectrum, including cognitive, language, motor and socialization.”

2. Chronic trauma may create a frequent unsettled flight, fright, or freeze state for a child, leading a child to view adults and the world around them as unsafe. The results of experiencing trauma can include “a pervasive pattern of dysregulation, problems with attention and concentration and difficulties getting along with self and others.” The Body Keeps the Score p. 160. This can look like withdrawal, aggression toward others (which for children of color can especially be perceived as a threat), hyperactivity, or impulsivity. Behaviors from trauma can look different at different ages—for example it might start as anxiety and then change into aggression towards others, particularly around puberty.

3. Some of the things, based on the Adverse Childhood Experiences Study, that can cause trauma for our child clients include, but are not limited to:
   - abuse, neglect, or severe deprivation;
   - sexual violence;
   - witnessing domestic and/or community violence;
   - involvement in the immigration, child welfare, or juvenile justice system;
• separation from families through death, placement into the foster care system, or having an incarcerated parent;
• poverty; and
• discrimination and bullying.

4. When considering the impact of a client’s trauma in a case, be prepared to present evidence on both how trauma affects the wiring of the brain and how brains can be rewired and reorganized with appropriate treatment. While trauma does not excuse behavior, it should be understood as a normal function of the brain that can and should be treated, not punished.

5. Lawyers should understand that clients who have experienced chronic trauma require significant support, particularly as they continue to grow and evolve. Brains can grow and be rewired in healthy ways if clients have trusted adults to help them. As such, it is our job to ensure that placements and services are appropriate and responsive to the needs of our clients. Safety and stability for our clients is one of the foundational ways that they will become resilient, and so we should focus on placements with well-supported family members, the stability of those placements, and support in school for your school-aged clients.

To learn more, see Dr. Nadine Burke Harris’ TED Talk, “The Body Keeps the Score: Brain, Mind and Body in the Healing of Trauma,” by Bessel Van Der Kolk, M.D. and/or The Deepest Well by Nadine Burke Harris, M.D. These are invaluable resources with information about how trauma impacts humans as well as the most effective treatment.

Eliza M. Hirst is a deputy child advocate at the Office of the Child Advocate in Wilmington, Delaware, and Cathy Krebs is the director of the Children’s Rights Litigation Committee.