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How to Use Litigation to Improve Mental Health Care for Children

By Lisa Freeman

The adequacy of mental health services for children in the child welfare and juvenile justice systems is a matter of persistent concern. Children in these systems are typically members of racially segregated, impoverished communities, and are therefore politically and economically disempowered. They are minors and therefore have virtually no voice in the political process. And, they are persons in need of mental health services, who may face individual obstacles to effectively advocating for services. As a result, it is not surprising that these children often lack access to mental health services, let alone access to quality services. At the same time, it is no surprise that the mental health needs of children in the child welfare and juvenile justice systems are great. The Juvenile Rights Practice (JRP) of the Legal Aid Society in New York, with pro bono assistance from Patterson Belknap Webb & Tyler LLP and Orrick LLP, has succeeded in improving the nature and quality of mental health services to our clients in each of these systems through federal class action litigation. While these cases certainly did not solve all the issues, they are instructive to practitioners in other jurisdictions.

As the largest legal organization serving children in New York City, the Legal Aid Society’s JRP continuously seeks to ensure that children in the child welfare and juvenile justice systems receive the mental health care they need. JRP provides legal representation to children who appear before the New York City family courts in all five boroughs, in abuse, neglect, juvenile delinquency, and other proceedings affecting children’s rights and welfare. Last year, our staff represented some 34,000 children, bringing us into daily contact with children and their families, social service providers, and state and city agencies whose practices impact our clients and their families. In addition to representing many thousands of children each year in trial and appellate courts, JRP also pursues impact litigation and other law reform initiatives on behalf of our clients and has successfully brought systemic litigation in recent years that has improved the provision of mental health services in both the child welfare and juvenile justice systems.

Mental Health Care in a Juvenile Justice Setting

The vast majority of children in juvenile detention and placement have a need for mental health care. Studies show that nearly seven in 10 youth involved with the juvenile justice system are experiencing a mental health issue, and one in four of these youth exhibit severe functional impairment. Mental Health Ass’n in N.Y. State, Inc., Report on Juvenile Justice, Mental Health & Family Engagement 4 (2013). A report by the Vera Institute of Justice made similar findings: “approximately 85 percent of young people assessed in secure detention reported at intake at least one traumatic event, including sexual and physical abuse, and domestic or intimate partner violence . . . [and] one in three young people screened positive for Post-Traumatic Stress Disorder (PTSD) and/or depression.” According to the New York City Administration for Children’s Services (ACS), which now administers juvenile detention and placement, in the first four months of 2016, 56 percent of youth in detention were referred for and received mental health services.

JRP had a long-standing concern about the quality of mental health treatment provided to children placed as juvenile delinquents with the New York State Office of Children and Family Services (OCFS), as well as concerns about the use of restraints and excessive force in OCFS facilities. In late 2006, JRP was spurred to investigate following the death of Darryl Thompson, a 15-year-old OCFS resident, who died in the course of a restraint. An investigation by the U.S. Department of Justice, under the Civil
Rights of Institutionalized Persons Act, resulted in a scathing findings letter in August 2009 detailing constitutional violations. A report of then New York State Governor David Paterson's expert task force, which included the head of JRP, provided further confirmation of the existence of system-wide problems regarding the provision of mental health services and the use of restraints in OCFS.

Litigating to Improve Mental Health Care in the Juvenile Justice System
In 2009, JRP, along with Orrick LLP, filed a federal class action lawsuit on behalf of 14 youth in certain OCFS facilities seeking individual damages and injunctive relief. That lawsuit, *G.B. v. Carrión*, No. 09 CV 10582 (S.D.N.Y. filed Dec. 30, 2009), alleged that as a result of OCFS policies and procedures, staff used excessive and unduly harmful restraints and failed to provide appropriate mental health evaluations and care to youth in violation of the Due Process Clause of the Fourteenth Amendment, Title II of the Americans with Disabilities Act, and section 504 of the Rehabilitation Act. The lawsuit further asserted that these issues were not unrelated—the failure to provide minimally appropriate mental health care led to the excessive use of force and restraints, and, in turn, the excessive use of restraints aggravated the mental illness of youth in OCFS’s care. As a result, the lawsuit alleged, children with mental illness were discriminated against based on their disability.

Many of our named plaintiffs had significant mental health diagnoses; however, they were receiving “treatment” from staff who lacked any training in mental health care. Some of these youth had received psychiatric treatment prior to their juvenile placement; others could have benefited from access to appropriate treatment. For many of these youth, their mental illness led to the behavior that resulted in their placement as juvenile delinquents.

The lawsuit was settled in 2013 with a requirement that OCFS implement new policies intended to reduce the use of force and physical restraints against residents, to provide comprehensive mental health services, and to establish a quality assurance and improvement system to ensure that policies and procedures are being followed. The settlement also provided damages awards for the 14 individual named plaintiffs. By the time of the settlement, then Commissioner Gladys Carrión had already dramatically increased the number of mental health practitioners serving OCFS residents and had begun implementing the “New York Model,” a behavioral treatment program, for the provision of mental health services.

Mental Health Care for Children in Foster Care
Children in foster care often have greater needs for mental health care than children in the general population. According to the Bazelon Center:

> A significant proportion of the children who come into state child welfare systems have mental health disorders—between 40 and 60 percent have at least one psychiatric diagnosis and about a third have three or more mental disorders. Mental health service use by children in foster care is eight times higher when compared with other low-income youngsters on Medicaid. Use of mental health services increases with age, and fully 90 percent of youth in foster care receive mental health services.

In contrast, the Annie E. Casey Foundation estimates that 17 percent of children in the general population have one or more emotional, behavioral, or developmental conditions.

For children in foster care, access to appropriate mental health services can be particularly challenging. Although they are automatically enrolled in Medicaid, they face numerous obstacles, some typically faced by poor people accessing mental health services, others more unique. For instance, many mental health practitioners who accept Medicaid have long wait times, and child psychiatrists are in particularly short supply. In addition, clinics serving poor people frequently rely on
students and other staff who turnover frequently, resulting in a lack of continuity of care, essential to building a therapeutic relationship and providing quality mental health services.

Children in foster care are particularly disadvantaged in the pool of Medicaid recipients and are particularly vulnerable to the excessive use of psychotropic medication and of psychiatric hospitalization. They may have been traumatized by events leading to their placement in foster care or by the very removal from their parents. Foster parents who are having difficulty managing children's behavior may seek psychotropic medication as a "quick fix." At the same time, birth parents may lack information about alternatives to recommended psychotropic medication or may feel unable to object to a recommended psychotropic medication out of fear that they will be viewed as insensitive to the needs of their children, or even neglectful, while an investigation against them is pending.

For all of these reasons, it is essential to ensure that adequate mental health services are available for children in foster care, that birth parents are provided comprehensive information to determine whether to consent to psychotropic medication for their children, and that the use of psychotropic medication is closely monitored.

In 2008 and 2009, JRP voiced great concern about clients languishing in acute care psychiatric hospitals, due to a lack of planning by their foster care agencies and a lack of oversight by ACS. In some instances, we were contacted by the hospital and told that our client was ready for discharge, but that the child could not be discharged because neither ACS nor the foster care agency had identified a placement. In other instances, we were never notified of our client’s hospitalization, and were therefore unable to timely advocate for his or her discharge. After multiple experiences of a lack of notice and repeated efforts at individual advocacy in family court, JRP decided to file a class action lawsuit to address these practices.

In 2010, along with Patterson Belknap Webb & Tyler LLP, JRP filed a federal class action lawsuit against ACS challenging the failure to provide adequate discharge planning for children in foster care in acute care psychiatric hospitals. This lawsuit, A.M. v. Mattingly, 10 CV 2181 (E.D.N.Y. filed May 12, 2010), alleged violations of Title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act, which bar a public entity from discriminating against a qualified individual on the basis of his or her disability, and asserted that unjustified institutionalization constitutes such discrimination. The lawsuit also alleged a violation of New York Social Services Law and implementing regulations, which require ACS to place children in its care in the least restrictive, most home-like setting. Finally, the lawsuit alleged violations of the Due Process Clause of the Fourteenth Amendment and of Article VI of the New York Constitution.

In 2011, the parties settled A.M. v. Mattingly. The settlement provided injunctive relief requiring the creation of a Mental Health Coordinating Unit (MHCU) within ACS to track and coordinate the admission and discharge of children in ACS custody from acute care psychiatric hospitals, extensive reporting to plaintiffs' counsel, notification to family court counsel within three business days of a child's hospitalization, and the development of a protocol to address individual clients. The settlement also required the implementation of a policy that mandated contact between a case worker and the hospital at specific intervals, and concurrent discharge planning. The settlement additionally required MHCU to train and provide technical assistance to ACS and foster care agency staff to ensure their compliance with the policy. Finally, the settlement provided for monetary damages for the individual named plaintiffs who were detained in hospitals despite being ready for discharge.

JRP monitored compliance until the stipulation of settlement expired in 2016. Over the course of the monitoring period, we found that the rate at which children in foster care were admitted to acute care psychiatric hospitals remained relatively stable. However, over time the average length of hospital
stays gradually declined. Over the first two years of monitoring, the percentage of children who experienced acute care psychiatric hospital stays longer than 22 days fluctuated between approximately 80 percent and approximately 45 percent. After the first two years, the percentage of children in foster care experiencing hospital stays longer than 22 days gradually declined, hovering around 25 percent at the conclusion of monitoring. Some of those remaining hospitalized for 22 days or more were awaiting placement in a facility with a higher level of care, such as a state hospital or residential treatment facility. Waiting times for such placements remain problematic, but could not be addressed through the A.M. settlement.

Conclusion
Children in the child welfare and juvenile justice systems are some of the most needy and vulnerable members of our community. Because they are not a politically powerful group, litigation may be the most effective tool to force government actors to address their needs. Class action litigation, however, requires significant resources. For legal services organizations to undertake system litigation, a partnership with private law firms providing pro bono services is a virtual necessity. Not only do pro bono firms provide essential assistance, but their presence also may make the government defendants more likely to consider settling the case. The Legal Aid Society has the benefit of a strong network of private law firms seeking pro bono opportunities. With the help of these partners, and with our front-line experience representing children throughout New York City, JRP has been able to bring new attention and new resources to benefit our clients.

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Closed Doors and Dead Ends: Ensuring Access to School for All Children

By Justin Deabler, Diane Lucas, and Ajay Saini

An increasingly hostile climate toward immigrants and refugees has demanded a forceful response from advocates and public authorities in order to ensure a basic American right—that the schoolhouse doors remain open to all students regardless of citizenship or immigration status. Across the country, from New York to Texas to Colorado, immigrants have faced barriers to school enrollment. Many students have been blatantly turned away by school registrars, while other denials occur through subtler means like onerous and chilling enrollment procedures.

The Civil Rights Bureau of the New York State Office of the Attorney General (OAG) has long worked to ensure that immigrant and refugee communities have equal educational access, as guaranteed by state and federal law. The right to such access, irrespective of citizenship or immigration status, harkens back to the landmark 1982 ruling by the U.S. Supreme Court in *Plyler v. Doe*, 457 U.S. 202 (1982). There the Court held that state and local officials cannot deny enrollment to a student based on his or her immigration status. From 2014 through 2017, the OAG engaged in a multiphase enforcement initiative to make good on the promise of *Plyler* and to ensure equal educational access for immigrant and refugee students. The strategy involved developing joint guidance with the chief educational regulator for our jurisdiction; advising on a significant revision of regulations governing school enrollment; over 20 enforcement actions against individual districts for noncompliance; and, for the first time in the OAG’s history, filing and settling a federal civil rights lawsuit against a district over its discriminatory enrollment and academic placement practices.

The initiative was effective in confirming the OAG’s jurisdiction to bring federal civil rights actions against public school districts, and in bringing systemic change to the more than 700 districts educating students across New York. Moreover, as the OAG continues to tackle emerging challenges facing immigrant communities—e.g., the fear of federal immigration enforcement being conducted in schools—the initiative has served as a model for effective enforcement action, partnership with other public regulators, and guidance to school districts and local authorities.

This article offers the OAG’s experience as a case study in public civil rights enforcement, with an eye toward replicating its strategies—in both the public and nonprofit/advocacy sectors—to address evolving problems facing immigrant communities. We discuss pertinent sources of law and enforcement strategies, and then focus in more detail on questions of federal jurisdiction and standing that arose in litigation settled last year that may be pertinent to other attorneys general considering litigation as a vehicle of federal civil rights enforcement. Our hope is that the initiative will serve as a model for enforcement strategies that state and local officials across the United States can utilize to protect immigrants’ rights, in a particularly troubling national atmosphere.

**OAG’s School Enrollment Initiative**

The OAG’s school enrollment initiative began in fall 2014, as a response to the surge of unaccompanied minors resettling in the United States. During the spring of 2014, tens of thousands of children from Central and South America crossed the U.S.-Mexico border seeking refuge from gang violence or other social breakdown in their home countries. These children, unaccompanied by parents or family members, were resettled in communities across the United States while they awaited their immigration proceedings. The majority of unaccompanied minors went to states where immigrants have traditionally settled, like Texas, New York, California, and Florida. A large number have also been
sent to Maryland, Virginia, Georgia, and Louisiana. In total, 5,500 unaccompanied minors resettled with extended family and friends in New York, with 53 percent in Nassau and Suffolk counties and 35 percent in New York City.

As reported in local and national media, with this surge came a response from some school districts, which used existing requirements—or passed new requirements—to create barriers to the enrollment of unaccompanied minors and of immigrant students more generally. These requirements typically sought, as a condition of enrollment, items that these youth would not have with them or that immigrant families would have difficulty obtaining: (1) a Social Security card; (2) visa documentation or other documents concerning immigration status; (3) an original “raised seal” birth certificate from the youth’s country of origin; (4) translated academic records from the country of origin; (5) a guardianship or equivalent order from a U.S. court terminating the rights of the youth’s parent(s) in his or her country of origin; (6) a statement from a landlord under penalty of perjury, swearing to the residency of the youth and all other cotenants in a housing unit; or (7) onerous, multiple, and highly specific documents to prove residency.

These barriers to enrollment directed at immigrant students violated the Equal Protection Clause of the U.S. Constitution. In finding that all students have equal access to a public education in *Plyler*, the Supreme Court emphasized the importance of educational opportunity in “preparing[ing] individuals to be self-reliant and self-sufficient participants in society.” *Id.* at 222. The Court went on to state that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.* at 223. Given this paramount importance, the Court found that the right to an education “must be made available to all on equal terms.” *Id.*

Recognizing that enrollment barriers created by various school districts across the state posed an immediate constitutional problem, the OAG began crafting a strategy to address the issue. The OAG was mindful of the widespread nature of the problem and the fact that investigations of individual school districts, without a more comprehensive approach, could amount to mere drops in a bucket. Our office’s first step was to build upon an existing relationship with the primary education regulator in our state, the New York State Education Department (NYSED), and together our agencies announced a joint compliance initiative in October 2014. The initiative rolled out in the following phases.

First, the OAG provided feedback to NYSED in the crafting of proposed regulatory amendments for consideration by the New York State Board of Regents, in order to clarify how school districts should conduct enrollment in compliance with state education law and the U.S. Constitution. Those amendments were adopted on an emergency basis in December 2014, February 2015, and April 2015. The amended regulation took effect as a permanent rule on July 1, 2015. Among other things, the revised regulation clarified that districts must immediately enroll any student who presents himself or herself at school, and then have three business days to obtain necessary documentation to finalize that enrollment. The regulation explained that districts should not, as a condition of enrollment, require the types of documentation listed above that would tend to reveal the citizenship/immigration status of a youth or guardian, that functioned as a form of veiled code enforcement, or that placed burdens of translation on a youth or guardian. The regulation also provided an expanded, nonexhaustive list of acceptable forms of proof of age and residency and required that all school districts disclose this list to the public. See *N.Y. Comp. Codes R. & Regs. tit. 8, § 100.2(y).*

Second, with the assistance of NYSED and civil rights advocates, our office identified 20 school districts across New York whose enrollment requirements presented facial violations of the Fourteenth Amendment’s Equal Protection Clause, as interpreted by the U.S. Supreme Court in *Plyler*. These districts required as a condition of enrollment, among other things, a Social Security card or number, a valid visa, or other documentation concerning the immigration status of a youth (or guardian of such youth) seeking to enroll, or made written inquiries about the national origin of students seeking to
enroll. After making contact with these districts, the OAG entered into settlement agreements with all 20 school districts that specified relief including the development of new enrollment materials, policies, and procedures; training of all staff who touched the enrollment process; and regular reporting of enrollment denials to the OAG, for a three-year period.

Third, the OAG initiated investigations of three districts about which our office had received complaints. The first involved a school district that had created a “wait list” of approximately 50 students, many of them unaccompanied minors, who had been turned away after attempting to enroll, and additional students (also immigrant and unaccompanied minors) who signed in for attendance and then were transported to an off-site location where they were warehoused for the duration of the school day. The second involved a new element beyond enrollment barriers: the academic diversion of immigrant and English language learner (ELL) students. In that case, the school district had adopted a policy of diverting limited English proficient students over the age of 16 to an adult learning center to study ESL, with no chance of obtaining a high school diploma. In the third investigation, the school district used residency interviews and highly restrictive interpretations of residency regulations to deny enrollment to unaccompanied minors, including one who had fled conditions of gang violence in El Salvador. These investigations were initiated under equal protection guarantees within the federal and New York constitutions, federal antidiscrimination statutes, the New York State Education Law, and state education regulations concerning both student enrollment and districts’ obligations to provide bilingual education to their students. See, e.g., 42 U.S.C. §§ 2000c-6, 2000-d; 28 C.F.R., § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2) (Titles IV and VI of the Civil Rights Act of 1964 and associated federal regulations); 20 U.S.C. § 1703(a), (e), (f) (Equal Educational Opportunities Act of 1974); N.Y. Educ. Law §§ 3202(1), 3205; N.Y. Comp. Codes R. & Regs. tit. 8, §§ 117, 154, 200 et seq.

The investigations resulted in settlements with each district mandating relief that included—in addition to the elements set forth in prior settlements—the hiring of an internal enrollment/academic placement ombudsman to oversee those functions within the districts, the hiring of an independent monitor to report to the OAG, and compensatory services to all students who were delayed or denied enrollment or were diverted into non-degree-bearing academic programs.

Federal Litigation and the Parens Patriae Doctrine
In April 2015, the OAG opened an investigation into another school district, the Utica City School District, based on complaints that the district had a long-standing policy of automatically diverting older ELLs—or students the district perceived to be such—into non-degree-bearing ESL-only programs. For decades, the city of Utica has been a major refugee resettlement center thanks to the efforts of a local refugee nonprofit organization based there. The allegation that the district maintained a multiyear policy of exclusion for older immigrant students potentially affected a substantial number of youths in Utica. Despite efforts at settlement in July 2015, the OAG and the district could not reach agreement. In November 2015, the OAG sued the school district, its board of education, and its superintendent in the U.S. District Court for the Northern District of New York. The complaint alleged claims under the federal and New York constitutions, the New York Education Law and associated regulations, Title VI, and the Equal Educational Opportunities Act. This was the first time the OAG had sued a school district in federal court.

In February 2016, the defendants filed a motion to dismiss, arguing chiefly that the OAG lacked standing to bring suit. In opposing the motion, our office argued that it had standing pursuant to the parens patriae doctrine. The doctrine reflects the common-law principle that a sovereign, as “parent of the country,” may step in on behalf of its citizens to prevent injury to those who cannot protect themselves. The doctrine was articulated most recently by the U.S. Supreme Court in 1982 and, while it varies somewhat by federal appellate district, generally requires a state attorney general to assert (1) a “quasi-sovereign interest” that (2) affects a substantial segment of its population and, in some jurisdictions, (3) an injury for which affected individuals could not obtain complete relief through a
private suit. See Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592 (1982); New York ex rel. Abrams v. 11 Cornwall Co., 695 F.2d 34 (2d Cir. 1982), modified on other grounds, 718 F.2d 22 (2d Cir. 1983) (en banc) (upholding OAG’s standing in suit protecting individuals with mental disabilities, pursuant to Civil Rights Act of 1871). The OAG cited to the substantial body of case law that identifies the protection of its residents from discrimination as a paradigmatic quasi-sovereign interest.

In April 2016, the district court denied the defendants’ motion to dismiss in its entirety. See New York ex rel. Schneiderman v. Utica City Sch. Dist., 177 F. Supp. 3d 739 (N.D.N.Y. 2016). In doing so, the court recognized the OAG has a “unique status as the representative of the greater public good and [a] concomitant mandate to secure wide-ranging relief that will inure to the direct and indirect benefit of the broader community.” Id. at 753–54. Following resolution of the motion, the OAG and the defendants initiated settlement talks with the magistrate judge. In July 2016, the parties filed and the district court so ordered a consent decree mandating relief similar to what the OAG had obtained in its prior investigations of school districts.

Next Steps in Protecting the Rights of Immigrant Students and Communities

The OAG’s school enrollment initiative may serve as a model for effective government enforcement action on educational access, as well as on other issues relating to immigrants’ rights. From the moment the OAG identified the discriminatory conduct in October 2014, and identified a potential constitutional violation, the office pursued several simultaneous strategies to encourage systemic change. Between issuing joint guidance letters with NYSED, advising on the revision of relevant regulations, and initiating enforcement actions and litigation, the OAG was able successfully to reform district enrollment practices in a manner that protected the rights of immigrant students. Moreover, the OAG also succeeded in confirming its jurisdiction to bring federal civil rights actions against school districts. The initiative described above could be adopted by state and local authorities across the United States as, sadly, New York is not the only state whose school districts erect barriers to enrollment for immigrant students.

The OAG’s school enrollment initiative also offers insights to state and local officials across the country as they develop strategies to address new concerns affecting immigrant communities. Many such communities have expressed concerns about widespread deportation raids and rising rates of hate crimes against immigrants or those perceived to be such. The OAG has addressed these concerns, in part, by working collaboratively with other state agencies and issuing guidance to urge local government authorities to comply with their constitutional obligations. For example, in November 2016, the OAG issued guidance to local district attorneys, explaining how and when to effectively prosecute hate crimes. Similarly, in January 2017, the OAG issued guidance to municipalities explaining how to comply with their constitutional duties when processing detainer requests from federal immigration authorities. And in February 2017, the OAG partnered again with our state education regulator to issue a joint letter to school districts explaining their constitutional obligations to immigrant students, and providing guidance to districts faced with the prospect of federal immigration authorities targeting students on school grounds. In taking these steps, the OAG has relied on its experience during the school enrollment initiative to inform strategy and determine which tools would be effective, including coordinated guidance from pertinent public agencies and regulators.

Our office has found that, in order meaningfully to protect the rights of all students, we must use a multifaceted approach that emphasizes cooperation among public entities, nonprofit organizations, and other advocates. It is our hope that other state and local officials, as well as advocates, will utilize the model and strategies described here to enforce the rights—increasingly threatened—of immigrant communities within their own jurisdictions.
Justin Deabler, Diane Lucas, and Ajay Saini are assistant attorneys general in the Civil Rights Bureau of the New York State Office of Attorney General. They are recipients of the Louis J. Lefkowitz Memorial Award for outstanding performance on behalf of the People of the State of New York, in recognition of the initiative described in this article.
Safety Planning for Children of Undocumented Parents

By Jennifer Baum

In 2013, more than 5 million children in the United States (over 7 percent of the total U.S. child population) were living with at least one undocumented parent, according to the Migration Policy Institute. The overwhelming majority of these children (80 percent) were U.S. citizens. The Washington Post reported that more than half a million of these children’s parents have in fact been deported since 2009. That’s a lot of U.S. children living day to day with the sudden loss, or risk of sudden loss, of a parent through deportation.

Children of deported parents, like children from disrupted households generally, are at increased risk of poverty; psychological trauma (including depression, behavioral problems, and cognitive and emotional deficits); educational impairment (lower grades and attendance); homelessness and housing instability; lack of access to health care; food insecurity; and other negative outcomes. But the prognosis for children of undocumented or mixed-status families is worse than that for families without immigration concerns because language barriers and parental fear of deportation create additional obstacles to accessing social services. The good news is that child advocates can play a meaningful role in mitigating some of this harm by advising and assisting deportable parents on how to plan ahead for their at-risk children. This article identifies some discussion points and concrete action plans for working with deportable parents and their children.

Preparing the Children

Child advocates come to their clients through a variety of legal contexts, including child protection, juvenile delinquency, educational advocacy, custody/guardianship, family offense, and supervision cases. Any advice or assistance given to family members should reflect the context of the relationship and each family’s individual characteristics. Whom does the advocate represent, if anyone? Are there any conflicts of interest in working with other family members?

**What to tell the children?** Assuming there is no conflict of interest, a first step would be to help parents determine what conversations to have with their children. Parents should consider the age and maturity of each child, and which family members are deportable. In a mixed-status family, one or both parents may be deportable, along with one or more of the children or other relatives. Parents should contemplate the family’s unique composition and construct age- and circumstance-appropriate conversations or other preparations for each of the children. This is easier said than done.

The process of describing the actual details of deportation could itself leave younger children traumatized. Instead, parents can indirectly prepare younger children by strengthening and maintaining the relationship between the children and their designated emergency caregivers, easing the effects of a sudden transition to the caregiver’s household should such eventually become necessary. If the designated caregiver lives far away, a family might use Skype, FaceTime, WhatsApp, and other free messaging and video conferencing apps to keep bonds strong.

In planning out their conversations with older children, parents should first ask them what they already know, and then correct any misinformation they may have about the family specifically, or immigration in general. Parents should then carefully give children an accurate explanation of the family’s circumstances. (Advocates can obviously play a significant role here...
in educating the parents about their rights and responsibilities—there are many fact sheets from local and national organizations online; see below.) Older children might be able to handle more information, but might also overshare what they learn, such as with younger siblings or others outside of the family. Parents should therefore consider instructing older children on how to politely decline discussing “private information” such as immigration status with other adults.

Parents should also think about whether some or all of the children themselves are deportable, and explain what that might mean for each family member: will the parents seek to have everyone join them, and on the same timeline? How will a mixed-status sibling group stay in touch until they can be reunified? Even if the parents are unsure of all of the answers themselves, letting children know they can discuss it with them will give them a sense of participation and control.

These can be complicated conversations. The Massachusetts School of Professional Psychology created a free workbook, *Family Forever: An Activity Book to Help Latino Children Understand Deportation*, which can be accessed online. Resources such as these can help parents with suggested language to use and topics to cover during conversations with their children, before a deportation occurs.

Advocates might also consider enlisting a social worker or other mental health professional to facilitate conversations between parents and their children. Always be mindful, however, of a potential resource’s reporting requirements before disclosing immigration status or information that might put the family at risk of a child protective investigation.

**When to tell the children?** Parents should begin discussions with children and caregivers before they are detained, as communication with detained parents can be challenging or nonexistent. A U.S. Immigration and Customs Enforcement (ICE) “Parental Interests Directive” acknowledges and reaffirms apprehended parents’ rights and responsibilities, but the practical realities of visiting parents in immigration detention centers that can be located hours away naturally limits the ability to communicate at all. Additionally, communication with parents who have been deported can be next to impossible in the often chaotic early days of return.

Detained parents should make sure to immediately tell the arresting agents that there are minor children at home, and if applicable, that the detained parent is the sole caretaker of the children. Parents should repeat this statement often to other agents with whom they may subsequently interact, to make sure ICE is aware that the detainee has children at home. This may result in a stronger bond application, fewer transfers to remote detention facilities, or quicker arrangements for visits with children.

**When to tell others?** Parents should communicate information and plans to trusted friends or relatives as soon as possible. When parents are removed and there is no plan for their children’s care, the children may find themselves left home alone and child protective workers may be called in. Once child protection is called, the Adoption and Safe Families Act (ASFA) sets families on a slow march toward potential adoption—but this march may not be as slow as a deportation case. Unless parents plan quickly for the care of their children outside of foster care, or communicate regularly with case workers in the event their children are placed into foster care, the children might be freed for adoption before a deportation case is concluded. A family’s perils can therefore snowball into multiple legal proceedings and ultimately permanently separate children from their parents. That is another reason why it is so important to plan ahead.
An undocumented or mixed-status family’s support network often includes other undocumented adults. But whenever possible, family members should enlist a nondeportable adult as the designated caregiver in their safety plan, to protect the children from multiple disruptions. Seeking out potential caregivers with lawful presence as back-up resources should therefore begin as soon as possible.

**Assembling a Deportation “Go Bag”**

Most of us are familiar with the recommendations of disaster preparedness experts to put together a “go bag” before the Big One. The same theory applies to deportation, which could be an immigrant family’s “Big One.” A deportation go bag would contain essential survival tools and information for the relatives left behind.

A deportation go bag or kit should contain copies of all of a family’s important documents, such as:

- birth certificates *(of all family members, with certified translations)*;
- parents’ immigration records *(if any)*;
- powers of attorney and standby guardianship papers *(see below)*;
- court orders *(custody/guardianship orders, orders of protection, etc.)*;
- banking, car title, and other financial and personal property records;
- log-ins and passwords;
- health records;
- prescriptions;
- school records;
- documentation concerning special needs *(IEPs, early intervention assessments, etc.)*;
- contact information for relatives in the home country with whom deported parents might initially stay;
- contact information for an immigration attorney in the United States *(preferably one who is already familiar with the family or who comes with a personal recommendation)*; and
- instructions for accessing saved money and resources to help care for the children.

The go bag, whether physical or virtual, can also contain letters, photos, and prerecorded video messages to the children assuring them that they will be reunited as soon as possible, and statements about parents’ wishes for the children that can be used in a family court. A virtual go bag securely contains the same information as a physical one, but stores it all digitally, either online or on a flash drive *(make sure to use only secure programs or providers, or password protected media)*. Many go bag documents can also perform double duty: in addition to assisting children in transitioning to a new, temporary caregiver, documents like children’s school and health records can also help in a bond application by establishing longtime presence and community ties.

In addition to assembling a go bag, parents should memorize the names and phone numbers of the people in their support network, as they will not be able to check their phones for this information once they are detained.

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Consider Seeking Legal Advice
Parents do not need a lawyer to implement most features of an emergency preparedness plan, but consulting with an attorney could help a parent prepare for a bond application or a legal defense, and draft more complicated legal documents, if such are necessary. Parents who do not want, or cannot locate, counsel can educate themselves online: many local and national advocacy organizations (such as the ACLU, National Immigration Law Center, and LawHelp) have posted “know your rights” materials to their websites in English and Spanish.

There are not enough legal aid organizations to meet the needs, including the geographic needs, of all of the undocumented U.S. parents and their at-risk children throughout the country, but all of the measures described below can be implemented without an attorney. However, depending on a parent’s individual circumstances, many families might benefit significantly from the advice of counsel, such as in drafting legal papers (power of attorney, guardianship, standby guardianship papers), collecting prior immigration paperwork, ascertaining the existence of relevant court orders (orders of protection, child welfare orders), and other legal tasks.

Providing for the Care of the Children
There are numerous legal mechanisms for ensuring the care and custody of children, ranging from privately arranged powers of attorney, to formal court orders for guardianship, to foster care. A comprehensive survey of state law is beyond the scope of this article, but the most common legal devices are described below. Remember that the rules for each instrument vary and are governed by individual state laws.

**Power of attorney.** Many, but not all, states allow parents to designate, extrajudicially, another adult to stand in loco parentis to the child, through power of attorney. A power of attorney is a revocable private agreement that can grant the holder the authority to make decisions on behalf of a child, such as where the child lives, where he or she goes to school, and certain medical decisions. Powers of attorney can have expiration dates. They can also provide the authority to govern property, finances, business dealings, etc. Simple forms are available online and may require one or more witnesses and notarization. Some states require, and others may permit, powers of attorney to be registered or filed with the state to be enforceable. Some states do not permit designations of child custody through power of attorney, but may offer other options. For instance, New York, which does not offer powers of attorney for the care and custody or minor children, nevertheless recognizes 30-day and six-month privately arranged designation of person in parental relation forms. Each state varies in what legal instruments it offers its residents. Parents should make sure they understand what forms to use, and where to file them to become effective.

**Guardianship.** Guardianship is a court order determining the permanent or long-term care and custody of a child. It is not revocable because it is issued by a court, not the parent. There are no expiration dates on a guardianship order, but it will terminate automatically when the child reaches the age of majority or upon further court order. Guardianship cases can be handled pro se, but if guardianship is contested or there are questions about the fitness of a guardian, an attorney should be consulted. Guardianship cases involve court appearances and may involve fingerprinting and other background checks.

**Standby guardianship.** Roughly half of the states provide “standby guardianship” authority for designated adults to automatically assume temporary care of a child upon the occurrence of a triggering event. Many states require the triggering event to be a serious illness, so immigration detention or deportation may not qualify. Some states require a court order, but others allow extrajudicial agreements that comply with local requirements for witnesses and
notaries. Standby guardianship can be revoked, and therefore protects a parent’s rights better than a straight guardianship order would.

**Foster care.** Voluntary placement into foster care is an option available to all parents, though it may be difficult to effectuate from within immigration detention. A detained parent might become the subject of a child protective investigation for failing to return home during a period of immigration detention. But a parent or advocate may seek to convert an involuntary placement into a voluntary one, allowing the parent to regain custody of the child if the parent is released on bond, successfully defends his or her case, or is deported and wishes to send for the child after repatriation.

**Informal arrangements.** Many families use informal arrangements to care for their children. Some advantages are that such arrangements are flexible; they do not, in themselves, affect parental rights; and they can be effectuated immediately and revoked at any time. But disadvantages include placing an absent parent at risk of a child protective investigation, lack of clear decision-making authority concerning the health and education of the children, and increased poverty resulting from caregivers’ inability to access government benefits for such children.

**Reunifying Children with Parents Abroad**
Whenever possible, parents should obtain passports for their children ahead of time. Passports are good identification for U.S. citizen children, and will allow them to travel outside of the United States to visit a deported parent. Passports are also essential for undocumented children, as countries other than Mexico may decline to accept a child (whether deported or nondeported) without a passport or other travel documents, leaving them in limbo, or possibly detention, for longer. (Passports are not necessary for repatriations to Mexico.) U.S.-born children might also be able to obtain dual citizenship from their parents’ country of nationality. To obtain a passport, parents should contact their consulate or embassy (contact information is readily available online). The documentation and application requirements will vary depending on the issuing country. In larger immigrant communities, a consulate may hold a “passport day” to help children obtain necessary documents from their home country.

**Safety Planning for Immigrant Families Is Here to Stay**
Preparing children of deportable parents for an uncertain future is now a reality all immigrant families must acknowledge. Advocates can speak with community leaders, school officials, houses of worship, and social services agencies about incorporating immigrant family safety planning into the services they already offer to local families. Advocates can organize volunteers to draft powers of attorney or other legal documents on behalf of deportable parents. They can also assist in obtaining copies of the legal documents needed for a go bag.

In these ways, advocates can help reduce the potential trauma to left-behind, or temporarily left-behind, children. And all signs point to a growing demand for these services in the coming months and years.

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To Kill (Or Imprison for Life) a Juvenile: The Proper Exercise of Judicial Discretion for Sentencing a Juvenile Offender

By André M. Board

The killing of a mockingbird, in the Pulitzer Prize–winning novel *To Kill a Mockingbird*, is emblematic of the destruction of innocence. The songbird, in the literary piece, embodied a purity that brought harm to no one and should not be killed. A child or adolescent reflects that same innocence, and that wholesomeness invokes an earnest protection from harm. However, what if that mockingbird or adolescent harms another? Does the law seek to shelter the now "juvenile" from the retributive hand of justice? *United States v. Under Seal*, 819 F.3d 715 (4th Cir. 2016), engages this matter from the purview of legislative intent and constitutional jurisprudence.

The severability of unconstitutional provisions within statutes to punish juvenile criminal acts was an issue of first impression for the court. Previous Supreme Court decisions prohibited juveniles from being sentenced to death or to mandatory life without parole. In *Under Seal*, the government sought to prosecute a juvenile for murder in aid of racketeering under 18 U.S.C. §1959(a)(1), by severing or excising the statute to permit punishment under an inapplicable crime. The appellate court held that it is impermissible to use excision to combine the penalty provisions for two distinct criminal acts. The court found the government’s proposal to amount to an impermissible judicial rewriting of the statute’s murder penalty provision. Courts are provided the discretion to interpret legislative intent when determining the applicability of the law to a set of facts, but courts cannot rule in a manner that would alter the purpose or punishment set forth by the statute.

This case note discusses the effect the *Under Seal* decision will have on subsequent cases involving criminal acts charged against a juvenile. Second, it discusses how the decision in *Under Seal* limits the potential abuse of the principle of severability to prosecute crimes generally. Finally, the note briefly discusses the implications retroactivity will have on previous convictions.

The Case

In this matter, the government sought to transfer a juvenile defendant for prosecution as an adult. The defendant was almost 18 years old when he allegedly participated in a gang-related murder. The government sought to prosecute the defendant for murder in aid of racketeering under 18 U.S.C. §1959(a)(1). This statute provides that whoever, while engaged in racketeering, murders another individual will be punished by death or life imprisonment; for kidnapping, the punishment is imprisonment for any term of years or life. The government filed a delinquency information and certification against the defendant and moved to transfer him for prosecution as an adult for murder in aid of racketeering. The district court concluded that although factors were present to support the transfer, granting the motion would be unconstitutional. The court explained that it lacked discretion to sentence a defendant to less than the statutory mandatory minimum life sentence for a violation of

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section 1959(a) for murder. Court precedent held that imposing a mandatory life sentence on a juvenile was constitutionally prohibited. The court rejected this argument and explained that section 1959(a)(1) could be excised to permit a term of years sentence for a juvenile. The court reasoned that it had no authority under section 1959(a)(1) to impose a sentence other than the mandatory minimum provided by the statute required for murder.

The appellate court reviewed not only the district court's statutory and constitutional rulings related to the denied motion to transfer but also whether the denial was an abuse of discretion. On appeal, the government contended that the impermissible punishments can be excised from section 1959(a)(1), leaving intact language for the separate act of kidnapping in aid of racketeering, which would authorize a term of years up to a discretionary maximum sentence of life. The appellate court held the government's proposal contravened the principles governing both severance and due process. The appellate court found the government's proposal an impermissible judicial rewriting of the statute's murder penalty provision. The court agreed that the defendant cannot be prosecuted for murder in aid of racketeering because his conviction would require the court to impose an unconstitutional sentence against a juvenile. Furthermore, the appellate court affirmed the district court's denial of the government’s motion to transfer the defendant for prosecution as an adult.

Background

The Juvenile Justice and Delinquency Prevention Act states that a juvenile, between 15 and 18 years old, can be transferred to adult status for prosecution if he or she allegedly committed certain violent crimes, such as murder. A juvenile can be transferred if, after a hearing, a preponderance of the evidence shows that transferring the juvenile is in the interest of justice. In deciding to transfer a juvenile, a court considers the defendant's age, social background, nature of the alleged offense, and the juvenile's prior delinquency record. However, satisfying these conditions does not ensure the transfer, prosecution, or sentencing of a juvenile. The Supreme Court's interpretation of the U.S. Constitution has provided guidance on the constitutionality of sentencing juveniles.

The Eighth and Fourteenth Amendments of the U.S. Constitution prohibit sentencing a juvenile to the death penalty. The Eighth Amendment, applicable to the states through the Due Process Clause of the Fourteenth Amendment, prohibits cruel and unusual punishment. The Supreme Court explained how the death penalty would be a disproportionate, cruel and unusual punishment if applied to a juvenile in Roper v. Simmons, 543 U.S. 551 (2005). The death penalty's purpose is to promote retribution and deterrence of capital crimes by prospective offenders. Roper explained the Court's prior decisions regarding the execution of a juvenile and how such a punishment would "offend civilized standards of decency." Sentencing a juvenile to a death is rare and antiquated; the last juvenile execution, under the age of 16, was in 1948. The Court opined that "[t]he reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult." Furthermore, "a lack of maturity" and an "underdeveloped sense of responsibility found in youth more often than in adults" are acceptable rationales for a juvenile's criminal behavior. Last, the Court explained that juveniles are more vulnerable or susceptible to peer
pressure and have less experience and control over their environment, and that their character is not as well formed as that of an adult. The Court concluded that these characteristics substantiated an Eighth Amendment prohibition of the death penalty on a juvenile.

The Eighth Amendment also prohibits sentencing juveniles found guilty of murder to mandatory life without parole. \textit{Miller v. Alabama}, 132 S. Ct. 2455 (2012), examined how a mandatory life sentence for a juvenile is "cruel and unusual punishment" under the Eighth Amendment. In \textit{Miller}, a 14-year-old was charged with capital felony murder while committing arson. The lower court approved the defendant's transfer from juvenile status to be sentenced as an adult. The charged crime carried a mandatory minimum punishment of life without parole. The lower court held that life without parole was "not overly harsh when compared to the crime" and the mandatory nature of the sentencing scheme was permissible under the Eighth Amendment.

\textit{Graham v. Florida}, 560 U.S. 48 (2010), held that life without parole violates the Eighth Amendment when imposed on juvenile non-homicide offenders. \textit{Miller} examined the precedent regarding categorical bans on sentencing practices based on the culpability of the juvenile and the severity of the penalty. \textit{Roper} and \textit{Graham} established that children are constitutionally different from adults for the purposes of sentencing. Juveniles are deemed by the Court to have a diminished culpability and greater prospects for reformation, making them "less deserving of the most severe punishments." However, \textit{Miller} did limit this theory by asserting that a juvenile whose crimes reflect irreparable corruption may be sentenced to life without parole. \textit{Miller} further extended the rationale provided in \textit{Graham} to forbid a sentencing scheme that mandates life in prison without the possibility of parole. Such a scheme poses a great risk of disproportionate punishment when youth and its embodied characteristics are disregarded.

The Court in \textit{Montgomery v. Louisiana}, 136 S. Ct. 718 (2016), gave the \textit{Miller} holding a retroactive effect. A retroactive effect would permit juveniles sentenced, before the \textit{Miller} decision, to life imprisonment without parole an opportunity to be reheard under a collateral review (an attack on the judgment). The Court reasoned that the retroactive effect would not require a "relitigation" of sentences or convictions in every case in which a juvenile received mandatory life without parole. The government would have to find a remedy that would not force a juvenile, whose crimes reflect only transient immaturity and who has since matured, to serve a disproportionate sentence in violation of the Eighth Amendment.

In \textit{Under Seal}, the government argued to sever or excise the unconstitutional portions of the statute to apply the remaining portions. When a court determines that a statute contains unconstitutional provisions, it has the authority to "try to limit the solution to the problem" by "sever[ing] its problematic portions while leaving the remainder intact." A court can sever a statute and eliminate unconstitutional provisions of a statute so long as the remaining statute is fully operative as law and the congressional intent is not modified. However, if the "balance of the legislation is incapable of functioning independently," then severance is not permissible. Furthermore, a void in the statutory language cannot be filled by looking to other offenses.
The government in *Under Seal* proposed a penalty provision that would differ from the intent of the legislature, which would counter the Constitution's guarantee of due process. A defendant must receive fair notice of the conduct that will subject him or her to punishment and the penalty the government may impose. The right to a fair warning may be unlawfully omitted by an "unforeseeable and retroactive" judicial severability analysis resulting from excising one penalty provision to apply another.

The principle of severability was a matter of first impression for the court in *Under Seal*. The decision provides another consideration that needs to be made when sentencing a juvenile for a heinous crime. The appellate court in this matter appropriately followed the precedent of juvenile sentencing and prohibited the principle of severance because the action would change the legislative intent or the primary purpose of the statute. If the court permitted the application of severance or excision, as proposed by the government in this matter, it would empower the judiciary to create laws, a power exclusively reserved for the legislative branch. Furthermore, if the judiciary is provided this type of latitude, statutory law could be modified by prosecutors throughout the county to convict and sentence to a desired result.

**Analysis**

**Judiciary authority limitations.** The powers of the branches of government are clearly defined and divided. Laws are created and amended by Congress. The judiciary interprets these laws and enforces the congressional intent. The government, in *Under Seal*, proposed to sever unconstitutional provisions of a statute to permit a constitutional punishment of an unrelated crime. The court properly denied this application because it would extend judiciary discretion beyond its power. The judiciary cannot create new laws or modify them in manner that would alter or invalidate legislative intent. Limiting the breadth of severability and its overall application in *Under Seal* ensures prosecutors will remain within the bounds of judiciary power regarding statutory interpretation.

**Preventing an abuse of government prosecutor power.** The goal of every prosecutor is to put guilty criminals in prison. The prosecution applies statutory law to facts to ensure a judicial conviction and that the violating offender receives an applicable punishment. A prosecutor should not be given the ability to sever unconstitutional punishment provisions within a statutory law only to assert punishments of an inapplicable crime within the same law. This action not only would be a miscarriage of justice but would create a disparate impact on sentencing. This type of action would promote higher conviction rates and infringe on the legislative purpose the statute was created to serve. The appellate court in *Under Seal* appropriately limited the government’s ability to sever the applicable statute in a way that would punish a criminal juvenile offender contrary to the congressional intent.

**Retroactivity of Miller.** *Miller* created a retroactivity of sentencing on collateral review that will have future implications on prior decisions. *Under Seal* did not completely address the retroactivity implications of *Miller* because it was not applicable to the facts of the case. However, *Under Seal* further defines the protections afforded to criminal juveniles sentenced to death or mandatory life imprisonment without parole. Any juveniles sentenced to death or life without parole, prior to *Miller*,
will seek collateral review of their judgment in reliance on the rationale in *Under Seal*. The issue of retroactive remedies for now unconstitutional juvenile sentences, if left in its current state, will become problematic for lower courts.

The Supreme Court must now ensure that the lower courts appropriately apply the rule from *Miller* regarding resentencing matters of retroactivity. *Miller* established that juveniles cannot be sentenced to life imprisonment without parole. Lower courts must evaluate the factors established in *Miller*, the defendant's age and whether the crime reflects transient immaturity, to determine if the sentencing is protected under the Eighth Amendment.

Pursuant to *Miller*, the Supreme Court of Louisiana must release the now 70-year-old Henry Montgomery, who received at the age of 17 an automatic life sentence without parole. The court has an opportunity to free an individual who has served time beyond the promotion of retribution and deterrence of capital crimes by juveniles. States have a responsibility to effectively apply the retroactivity of *Miller* by reducing sentences or providing opportunities for parole. Mr. Montgomery and individuals similarly situated are owed a debt by the U.S. government: to be provided the constitutional protection they are entitled to.

**Conclusion**
The *Under Seal* decision further defines the sentencing of juvenile offenders. *Under Seal* establishes the parameters for the use of severance and excision in eliminating unconstitutional provisions of a statute. *Under Seal* can be used to further support retroactive resentencing or the inclusion of parole provisions in a life sentence. The decision represents another case that solidifies the constitutional protections provided to juveniles from "cruel and unusual punishments" under the Eighth Amendment.

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PRACTICE POINTS

Practical Tools to Meet the Educational Needs of Kids in the Juvenile Justice System

By Cheron Z. Mims

The Office of Special Education Programs (OSEP), recently launched a new web-based toolkit on Improving Outcomes for Youth with Disabilities in Juvenile Corrections. As recently noted by the U.S. Department of Education and the U.S. Department of Justice the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the Individuals with Disabilities Education Act (IDEA). More than 60,000 youth are currently in juvenile correctional facilities, and a large portion of these youth are identified as having a disability, yet less than half report that they are receiving special education services. This toolkit includes evidence- and research-based practices, tools, and resources that educators, families, facilities, and community agencies can use to better support and improve the long-term outcomes for youth with disabilities in juvenile correctional facilities. The toolkit focuses on four key areas: facility-wide practices, educational practices, transition and re-entry practices, and community and interagency practices.

- **Faculty-wide practices** ensure a continuum of supports focused on prevention and consistent reinforcement of expectations across facility environments. Facility-wide practices include a Continuum of Academic and Behavioral Supports and Services, Trauma-Informed Care, and Restorative Justice.

- **Educational practices** are used to improve educational outcomes for youth with disabilities in correctional facilities, youth must receive the educational, social-emotional, behavioral, and career-planning services they are eligible for under the IDEA. Educational practices that can be leveraged to improve outcomes comprise Access to High-Quality Education, Individualized Instruction, and IDEA Compliance.

- **Transition and re-entry practices** are suggested to ensure that youth with disabilities exit correctional facilities ready to return to school, community, or employment settings, effective transition and reentry practices must be planned and coordinated. Practices include Transition Planning Beginning at Entry, Prioritizing Family Involvement, and Coordinating Aftercare Services.

- **Community and interagency practices** offer services for youth with disabilities should be coordinated across the variety of partners (e.g., schools, community agencies, and probation) they engage with while in and out of correctional facilities. These practices involve Interagency Agreements, Expeditious Records Transfer, and Staffing.

Lastly, the toolkit includes linked resources to support the use of the State Correctional Education Self-Assessment (SCES). The SCES will help State Educational Agencies (SEAs) identify systems-features and interagency collaboration that need to be in place in order to improve practices for youth with disabilities in correctional facilities.

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How to Support the Educational Needs of Youth in Juvenile Justice System

By Cheron Z. Mims

Blueprint for Change: Education Success for Youth in the Juvenile Justice System is a project of The Legal Center for Youth Justice and Education (LCYJE)—a national collaboration of Southern Poverty Law Center, Juvenile Law Center, Education Law Center, and the American Bar Association Center on Children and the Law. It is designed to be a tool for all stakeholders (including youth, parents, educators, lawyers, judges, caseworkers, probation officers, child welfare workers for dual status youth, juvenile justice and education system administrators, state and local agencies, and policymakers). The Blueprint can be used as a checklist or guide by advocates for youth to ensure important education issues are being addressed. One key intention of the project is to spur broader system reform. Some implementation suggestions contained in this toolkit are: beginning conversations among various stakeholder groups, guiding systematic litigations strategies, identifying what data needs to be collected to measure outcomes; and many other suggestions as well.

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