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The Detroit Center for Family Advocacy: A Call for Replicating an Effective Model
By Robbin C. Pott

There needs to be a paradigm shift in how we approach families who struggle to properly care for the children in their care. Kids come to the attention of the child-protection system for lots of reasons, and too often their entry into foster care could be avoided if only the caretakers had the resources to address head-on the problems that put their children at risk. Too often the system expends resources to maintain a child outside his or her home rather than to fix the problems that cause the child to be removed in the first place.

The Detroit Center for Family Advocacy (CFA) employs a multidisciplinary model using legal and social work advocacy to empower families to overcome these underlying problems. CFA is a sponsored project of the University of Michigan Law School’s Child Advocacy Law Clinic. The center was founded by Professor Vivek Sankaran to address the injustice of children being removed from their families because their caregivers do not have access to help with legal issues affecting the safety and permanency of the children in their care.

Common legal issues are often at the root of a family’s troubles, but there are very few legal services available for low-income families. For example, a landlord/tenant dispute may put a child at risk of being removed from his or her family because of allegations of environmental neglect. A parent may need a personal protection order, and often even a divorce, to ensure the safety of his or her children. Outstanding traffic warrants create a threat of jail time for a child’s caregiver or are a barrier to an adoption or placement. Sometimes all it takes to keep a child with a birth parent is to establish legal and physical custody for a non-offending parent, or a guardianship is needed to keep a child with the relative with whom the child has lived for years. Right now, in most jurisdictions, when these families come to the attention of the child-protection system, the overwhelming response is to remove or keep the child away for lack of safety and permanence. But out-of-home placements can be avoided when resources are directed to services aimed to treat these root problems.

The Detroit Center for Family Advocacy Model
CFA’s multidisciplinary team consists of attorneys, social workers, and a family advocate, and the team is part of the center’s staff. An attorney leads the individualized service plan and provides direct legal services, while a social worker assesses the family’s social work needs and provides referrals, case management, non-legal advocacy, and emotional support. The family advocate is a parent who has personal experience with the child protection system—she had her children removed when they were young, and she successfully reunified with them. Now she is trained as a parent partner to support and guide parents who are currently involved with the system. The family advocate provides emotional support and helps families understand the
importance of the center’s services to the clients’ ability to keep their children safe and in their families.

CFA handles two types of cases: In our prevention cases, we intervene to prevent a child from being removed from the child’s home and to prevent a petition from being filed in juvenile court. In our permanency cases, we aim to remove barriers that impede a foster child achieving permanency. All of the families served by CFA have a legal problem that is putting a child at risk of being removed or lingering in care. In all of our cases, there is an abuse/neglect allegation substantiated by the child-welfare agency, and resolving the legal issue would provide for the child’s safety and well-being.

Evaluation Outcomes
CFA opened its doors in July 2009, and in 2012 an independent evaluation, supported by a private donor, analyzed data from the center’s first three years. The results are a clear indication that there is a need for these services and that these services do prevent children from entering or lingering in foster care.

During the evaluation period, the center served 110 children with the goal of preventing removal—and not one of those children entered foster care. CFA achieved its legal objectives in 98.2 percent of its prevention cases, and the multidisciplinary approach to addressing problems ensured that these children were able to remain in their homes.

CFA served 128 children with the goal of removing barriers to permanency during this same period. The team achieved its legal objectives in 97 percent of its permanency cases, and at the time of the evaluation, the court had closed 88.4 percent of these cases. In those closed cases, 56 percent achieved permanency through adoption, and 29 percent achieved permanency through reunification with a birth parent. CFA, Promoting Safe and Stable Families (full text of CFA’s evaluation report).

The Importance of the Model
CFA is unique because it provides the legal services that do not exist otherwise in the community for these families. But CFA is also unique because it understands that it takes more than just resolving a legal matter to ensure that these families can properly care for their children. We understand that we serve a population that faces a myriad of social and economic challenges, and we know that fixing one or two of our clients’ legal problems without also addressing these challenges is not always sufficient to make an intervention stick. We also understand that these families come to us weary of a system that says they are bad caretakers, and they are guarded against additional interference in their lives. This is why CFA’s multidisciplinary approach of providing an attorney, a social worker, and a family advocate is key to the model’s success.

True Stories
A caretaker was referred to CFA for help arranging a guardianship for her infant granddaughter. The birth mother kept leaving the child with this grandparent and was now in jail. Instead of
pursuing termination, the agency wanted the caretaker, with whom the child was bonded, to have custody while the mom worked on her own issues. During CFA’s enrollment process, the team discovered that the grandmother needed more than just a guardianship to ensure her ability to properly care for this child. An unresolved landlord/tenant issue caused the home to be a concern for the agency, and given the grandmother’s low-income status, she needed financial help with caring for an infant.

The CFA team not only established the guardianship but also successfully worked with the landlord to make the home suitable for the child, and the social worker facilitated the grandmother’s applications for food assistance and Medicaid, and made referrals for the furnishings and supplies that babies need. Throughout the case, the family advocate provided emotional support and encouragement to the client to help her understand how important her role is in maintaining her granddaughter’s ties to her biological family. CFA’s multidisciplinary advocacy prevented a petition from being filed, and foster care placement was avoided. A lawyer alone could not have achieved this result. The entire team was essential to this successful outcome.

The same is true for our permanency work. Take for example a mother that the agency referred to us who was on the cusp of reunifying with her one-year-old son. She had successfully completed her service plan but was told she needed to clear up her warrants before she could reunite with her son and to prevent the removal of her unborn child. CFA’s screening process identified this as classic case and accepted it, yet when the team enrolled this mother for services, several other needs surfaced. Not only were the warrants a barrier to getting her son back, but they were also in the way of her securing permanent housing. This mother also had unstable employment due to her lack of education and clearly had mental-health issues from all the stresses in her life. CFA was able to negotiate with the court to dismiss and forgive almost all of this mother’s fines and worked out a reasonable plan for her to satisfy the rest of her obligations. This allowed the team to help her into stable housing.

In the meantime, the social worker was able to help this mother complete applications for the benefits she was eligible to receive, helped her into employment and literacy support services, and advocated for her to receive the mental-health treatment she needed. The family advocate kept this client focused on her goal to reunify with her son and provided encouragement to stay on course. This mother was once on the verge of having her rights terminated, but with the right service provisions tailored to her needs, she now has custody of her two young children, she is securely housed and employed, and the agency was able to close this case.

**Replication**

The Detroit CFA would like to see this model replicated in other jurisdictions. These issues are not unique to Detroit, and these services should be part of the array of routine services available to families that come to the attention of the child-protection system in every jurisdiction. It is vital, however, that the model be replicated with fidelity to ensure similar outcomes.
There are five key elements to replicating the CFA model with fidelity.

1. **Collaboration with the local agency and courts.** Establishing a good relationship with the child-welfare agency and the courts that hear these cases is essential to replicating this model because these will be the main sources of referrals. New offices will rely on the agency and the courts to identify cases that involve legal problems that are directly related to the safety and permanency of the children. This collaboration should begin with educating these partners on the need for these services and providing guidance on how to recognize cases for which the new office can help. After the initial start-up, plan on routinely returning to the agency and courts to refresh this training to ensure these services remain salient and to ensure that turnover in the agency does not result in a decline in referrals.

2. **General practice attorneys with experience in child-welfare law.** Expect to see a wide range of legal issues come through the door. In its first three years, CFA handled cases involving guardianships, custody, landlord/tenant issues, paternity, domestic violence, public benefits, divorce, traffic and criminal warrants, agency administration disputes, and child-support problems. But all of these cases were couched in the context of child welfare, and it is essential that the lawyers understand that dynamic in addition to the presenting legal issue. Understanding the statutory grounds for removal and the timelines affecting permanency decisions will be a driving force in representing clients in these collateral matters with the aim of providing for the child’s safety and well-being.

3. **Social workers with experience working with attorneys.** Master’s level social workers (MSWs) should lead the social work advocacy efforts, and those MSWs ideally should have experience working with attorneys. CFA treats its social worker team members as agents of the center’s representation. They are bound by the team’s obligations to protect confidentiality and to advocate zealously for the client’s needs. Although the team does pursue non-adversarial approaches to problem solving, its advocacy often leads to court. Having an MSW who understands the legal strategy behind a service plan, who can champion the client’s cause without jeopardizing the overarching objectives, and who can provide testimony when called upon will greatly assist a new office’s ability to serve its clients successfully.

4. **A family advocate who has successfully navigated the system.** The family advocate will break down barriers between the client and the staff, which can be the linchpin of success in these cases. Clients are referred to CFA by the system that is threatening to take or keep their children. They often think CFA is part of the agency and that we work for the courts. It cannot be overstated how much credibility our family advocate lends to the project’s independence and how essential the family advocate is to the families’ cooperation with our services. The family advocate attends every intake, during which she shares her own story. As soon as the new client hears the advocate’s story, she lets down her guard. There is a sense of trust and hope, and this moment lays the foundation
for the team to build a rapport with the client. The family advocate is often called upon to help translate the team’s services and goals in a way the client will understand and buy into, and the family advocate continues to provide emotional support and encouragement throughout the case.

5. **A laser focus on legal issues that directly affect the caretaker’s ability to provide for the child’s safety and permanence.** A critical part of CFA’s screening process is to identify the legal issue that the center can resolve to either prevent removal or expedite an exit from foster care. Part of the challenge in educating the agency and the courts is to emphasize this essential nexus in order for CFA to accept a case. CFA does not accept a case in which the child will still be removed or remain in care even if our services are successful. For example, CFA will not accept a case to clear warrants if the caretaker is not making progress on the other service plan goals, like abstaining from drug use or remaining with a violent partner. It is CFA’s mission to reduce the number of kids in foster care, not simply to provide legal services to families involved in the child-welfare system. At the time of case acceptance, it is important to be sure that by removing the presenting legal issue, the child will remain in the home or will be returned. This will ensure that the services will have a direct impact on the child-welfare system and the number of children in it.

**Funding**
CFA’s funding is unique and specific to it being situated in Wayne County, Michigan. Through a contract with the county, CFA is able to match every private dollar raised with the Michigan Child Care Fund, a source of funding for prevention and out-of-home services to counties in the state. Other jurisdictions interested in replicating CFA’s service model have a variety of funding sources to explore, including local and national foundations, private donors, state and county budgets, federal Title IV-B and Temporary Assistance for Needy Families funds, and Title IV-E waivers.

**Technical Assistance**
The Detroit Center for Family Advocacy is interested in providing technical assistance to new offices. CFA is currently creating a replication manual, which includes process maps, example job postings, sample screening, intake and closing forms, and other resources CFA created as it designed this service model. For more information, please contact Robbin Pott at the CFA.

**Keywords:** litigation, children’s rights, Detroit Center for Family Advocacy, family advocate, foster care, child-protection system, permanency

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Championing the Education Rights of Court-Involved Youth

By Nancy Rosenbloom and Nancy Ginsburg

After six long years of litigation, a class of court-involved youth (children up to age 16 charged with delinquency in juvenile court or as “juvenile offenders” in adult court) reached a historic settlement ensuring their education rights upon return from incarceration and while in pretrial detention. The fight is not over for these students, whom some school personnel would rather not have to educate, but the litigation and the resulting court-ordered settlement have brought system-wide improvement that can surely be replicated in other jurisdictions.


All of these young people receive educational services while in custody, and most, when they are released, are of compulsory school age in our state and city. N.Y. Educ. Law § 3202; N.Y. City Chancellor’s Regulation A-101. Every single child has a right to attend school, until age 21 or completion of a high school diploma. N.Y. Educ. Law § 3202.

But all too often we found that our clients—whether they had been in a court-ordered setting for only days in connection with a minor misdemeanor case or for more than a year on a more serious matter—were unceremoniously being barred at the schoolhouse door of their home schools when they returned. Youth returning from facilities after being sentenced were often not given credit for the work they’d done while away, or they were offered school placements in the wrong grade or without special education services to which they were entitled. These actions violated their rights to due process of law and to the protections of the federal Individuals with Disabilities Education Act (IDEA), the state constitution, and New York education law.

What Did These Students and Their Parents Experience at the Time We Filed Our Case?

• Flat-out refusals by their home schools to readmit the students. Plaintiff J.G., for example, returned from a residential placement, and the New York City Department of Education referred her to a high school, which turned her away the next day, then failed to offer her any school placement until nearly two months later after she filed this lawsuit.

• Delays and excuses for not reenrolling students.
• Students penalized because the City failed to enroll them in school. Plaintiff J.S., for example, a special education student, accrued an erroneous record of 48 absences during a period when the education department had failed to enroll him anywhere.

• Education records not being transferred from one school setting to the next.

• School placement in the wrong grades or in GED programs, despite the fact that the New York City Department of Education told students they would be attending high school and earning regular high school credits.

• De facto exclusion from school by being warehoused for weeks, months, or even years in educational settings that did not meet legal requirements. Plaintiff J.M., for example, a special education student, returned from detention and a placement, and was sent by the City to a “transitional center,” where he was not awarded credits and did not receive special education services. After several months, the City finally placed him in a school placement that the school itself admitted was not appropriate. J.M. earned no credits for nearly two school years, and it took his counsel six months and a four-day hearing to obtain his school transcript and an accounting of his high school credits.

In New York, nearly two-thirds of students passing through court-ordered settings have special-education needs that have been identified—as in other jurisdictions, a far larger percentage than in the city’s school population as a whole. Statistics kept by the New York City agency that administers juvenile-detention facilities reveal that at least 60 percent of the students in the juvenile-justice facilities receive special-education services. This information was formerly published on the agency’s website, but the City has discontinued that practice. Based on our experience, there is no reason to believe that the student profile in detention has changed. For data on the New York City school population as a whole, see “Department of Education,” Preliminary Mayor’s Management Report, supra. See also Sue Burrell & Loren Warboys, “Special Education and the Juvenile Justice System,” Juv. Just. Bull., July 2000, at ¶ 1 (nationally, as many as 70 percent of incarcerated youth have disabilities) (citations omitted).

Many students entering and leaving court-ordered settings suffer from mental-health issues, substance abuse, significant trauma histories, or all of these. Some young people in this group had been disengaged from school before being arrested, and were now ready to reengage. Others simply sought to continue their education without interruption. Many were court-mandated to attend school immediately upon returning to the community despite the obvious obstacles. On a case-by-case basis, through extensive advocacy, negotiation, and, far too often, administrative proceedings or litigation, we and our cocounsel were able to battle our clients back into appropriate school placements and services. (The Legal Aid Society and Advocates for Children of New York are cocounsel for the plaintiffs in the litigation we discuss here, and Dewey & LeBoeuf LLP participated as cocounsel pro bono.)

The problems our clients faced persisted despite our extensive pre-litigation efforts to negotiate with the New York City Department of Education and despite clearly established law supporting our clients’ rights. In the litigation, we represented a class of New York City students who sued the New York City Department of Education and the New York State Education Department in federal court in December 2004, J.G. et al. v. Mills et al., No. 04 Civ. 5415 (E.D.N.Y.), challenging the City’s and State’s failure to ensure appropriate and timely transfer back to New York City community schools following detention or incarceration, and challenging the educational services provided in pretrial detention.

The Student Plaintiffs’ Main Legal Claims

**Federal due process.** The plaintiffs contended they were deprived of their property right to education (set forth in New York State constitution, statutes, and regulations) without due process of law in violation of the Fourteenth Amendment to the U.S. Constitution. See Goss v. Lopez, 419 U.S. 565, 574–75 (1975). This deprivation was caused by exclusion of children from school by being denied readmission or enrollment for no legally permissible reason and without any notice or due process procedures, or de facto exclusion by being warehoused for weeks, months, or even years in educational settings that did not meet legal requirements. The plaintiffs also claimed a denial of education without due process because the education department did not award them credit for work successfully completed or notify them of the reasons for not granting credit. Because of the district’s policies, students who moved between detention or placement mid-semester had no opportunity to earn credit for work completed.

**IDEA.** The federal statute guarantees all individual children with disabilities the right to a free appropriate education. 20 U.S.C. § 1400 et seq. The IDEA is a comprehensive law designed to rectify deficiencies in the educational opportunities afforded to students with disabilities, and it mandates very specific procedures and services for children with disabilities. The IDEA does not exempt students in or returning from court-ordered settings, or even those who have been temporarily removed from school. By its own terms, the law applies to “all children residing in the state between the ages of 3 and 21 inclusive, including children who have been suspended or expelled from school.” 20 U.S.C. § 1412(a)(1)(A). In this case, the education department violated the IDEA rights
of students with disabilities—a significant portion of court-involved students—by, among other things, failing to provide required evaluations of need, using boilerplate Individualized Education Programs (IEPs) instead of creating IEPs tailored to individual students’ needs, failing to make placement decisions based on students’ IEPs, and more.

**New York State Constitution and Education Law.** Article XI of the New York State Constitution requires a “system of free common schools, wherein all the children of this state may be educated.” N.Y. Const. art. XI, § 1. This right requires a “sound basic education.” *Campaign for Fiscal Equity, Inc. v. New York*, 100 N.Y. 2d 893, 906 (N.Y. Ct. App. 2003). New York Education Law section 3202 requires a public education, which includes the right to be in a public school for the purposes of earning a regular high school diploma. There is no exception for students who are returning from detention or incarceration. The plaintiffs argued that New York law creates property rights in education protected by the due process clause, which are also enforceable on their own. The plaintiffs also argued that students have protected liberty interests in the opportunity to achieve a diploma, which the defendants impaired by imposing diploma requirements and then denying the students the opportunity to take classes toward those requirements. *See also* N.Y. Educ. Law §§ 112, 3214, 3602, 4401 et seq.; N.Y. Comp. Codes R. & Regs. tit. 8, §§ 100, 101, 200 (additional sources of educational rights under state law and regulations).

**The Defendants’ Response and the Eventual Outcome**

In response to the litigation, New York City’s education department simultaneously opposed the students’ claims in court and instituted substantial changes, particularly in the early years of the litigation. After much negotiation, the plaintiffs eventually secured a certified class and entered into a court-ordered settlement with the City in 2011. This followed a 2008 consent decree with the State, which guaranteed a period of oversight, monitoring, and technical assistance. *J.G. v. Mills*, No. 04 Civ. 5415 (E.D.N.Y.), ECF Nos. 155, 187-2.

In the end, our clients secured substantial injunctive relief going forward, along with compensatory relief in the form of guidance meetings and access to tutoring, credit recovery, math and reading assistance, and referrals to vocational and adult education opportunities, which was available to thousands of students to whom the education department was required to send individual notices. The City’s education department drafted, with input from the plaintiffs’ counsel, a practical “best practices guide,” which is posted on the agency’s website and must be made available to all school personnel. *Assisting Students Who Are Involved in Court-Ordered Settings: A Guide for New York City Department of Education Schools/Programs* [intranet]; *J.G. v. Mills*, No. 04 Civ. 5415 (E.D.N.Y.), ECF No. 197-1. The state education department conducted audits of court-ordered school settings, issued guidance, and offered training and technical assistance for local school districts in the state, including an easy-to-use credit equivalency guide, translating the courses and credit system from state facilities to credits the city system recognizes.
Highlights of the relief (in addition to compensatory education services relief) secured on behalf of returning students are featured below. Under the court-ordered stipulation of settlement, the New York City education department must

- enroll students returning to New York City community schools from pretrial detention within two school days of discharge from the detention school

- provide a school placement to students returning to New York City schools from state juvenile custody within five school days of appearing at a New York City school enrollment location seeking enrollment

- provide a placement for students with disabilities returning from state custody, either in accordance with the student’s last home district Individualized Education Plan (IEP) or a “Comparable Services Plan”

- develop a new IEP for students with disabilities returning from state custody

- require schools to enroll students once they have been assigned to the school by a department of education enrollment office

- for students returning directly from local detention to a New York City Department of Education community school, provide student records (e.g., transcripts, report cards, and education plans) from the student’s time in custody to the student’s community school

- request education records from state facilities for students returning from them

- prepare a guide to assist New York City school staff on how to obtain educational records, award credits, and make programming decisions for students returning from court-ordered settings to New York City community schools

- make training available for schools concerning the requirements included in the settlement and specifically invite 10 schools a year to participate

- ensure that principals or their designees evaluate state custody transcripts for students returning from those settings

- ensure that the pretrial detention school identifies any incoming student who has an IEP and, for each student, request a copy of the IEP

- ensure that the three-year reevaluation process for students with disabilities in detention occurs
• make available remedial services to students in pretrial detention who are performing below grade level

• provide all students in pretrial detention the opportunity to take state standardized examinations required for promotion, and State Regents and Regents Competency tests

• designate individuals at enrollment offices who will be available to assist students returning from court-ordered settings with the reenrollment process

As the plaintiffs continue to monitor and work to enforce compliance with the settlement order, the City has recently designated a troubleshooter to work with students returning from court-ordered settings. Change has come slowly for our clients, who are certainly not the most favored population of the education system, but the progress has been significant.

**Keywords:** litigation, children’s rights, education, *J.G. v. Mills*, New York City schools, juvenile justice, due process, property right to education

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Are Charter Schools Upholding Student Rights?
By Rosa K. Hirji

Charter schools promote the idea that, like public schools, they are tuition free and open to all students. However, public schools cannot be selective about the students that they enroll and keep. On the other hand, charter schools—according to recent court decisions from the California Court of Appeal and a U.S. district court in Hawaii—have the discretion and ability to dismiss students in a manner that would be unconstitutional if done by a public school. As it becomes more apparent that students in charter schools do not enjoy the same rights as they would in public schools, the “public” nature of charter schools is called into question.

Scott B., a 14-year-old student with a diagnosis of attention deficit hyperactivity disorder (ADHD) was dismissed from his charter school by letter from the principal for bringing a knife to school and showing it to another student. There was no hearing and no finding to support the decision by the charter school’s board of trustees in the one-sentence dismissal letter. On June 14, 2013, the California Court of Appeal in Scott B. v. Board of Trustees of Orange County High School of the Arts ruled that charter schools are exempt from California law requiring due process hearing procedures for students undergoing an expulsion from their local public school. The decision in Scott B. allows charter schools in California to dismiss a student unilaterally, leaving that student with little protection against unfair removal. The court held that the due process hearing protections of the California Education Code do not apply to charter schools because Scott was dismissed rather than expelled. According to the court, a dismissal does not raise due process concerns to the same degree as expulsion because after being dismissed, the student is free to enroll in the local public school. Unlike public schools, the court observed, a charter school is a school of choice.

After Scott B., California charter schools can simply characterize an “expulsion” as a dismissal and thereby avoid ever having to provide an expulsion hearing.

Following on the heels of Scott B., the U.S. District Court of Hawaii in Lindsey v. Matayoshi granted a motion for summary judgment against a 14-year-old student, RFL, who was expelled from her charter school for posting comments about another student on her Facebook page. RFL did not receive a due process hearing. School administrators offered to assist RFL in enrolling in a local high school, but her parents declined in part because of distances and travel time. The court in Lindsey held that while RFL had a property interest in education, that interest did not include a right to a certain type of education or curriculum, smaller class sizes, or a school close to her home. Because RFL had the ability to return to the local public high school, the court held, she suffered no deprivation in her property interests; therefore, she was not entitled to a due process hearing for her expulsion from the charter school.

The idea propounded by the courts that a dismissed or expelled charter school student can enroll in a public school the next day does not always reflect reality. For example, the California
Department of Education advises school districts that once a student is expelled from a charter school, “[t]he district may choose to treat a student expelled from a charter school in the same manner as a student expelled from the district.” The San Diego County Office of Education instructs school districts to review charter school removals to determine whether the district would have expelled the student and, if so, to enroll that child in an alternative school. Emily Alpert, “San Diego’s Expulsion Purgatory,” Voice of San Diego, Apr. 11, 2013. The court decisions do not take into account the disruption caused to the child, the family, and the local public school when a student is forced to relocate midyear. The decisions further do not anticipate the consequences of this almost unfettered authority by charter school administrators to remove students, particularly the consequences on students of color or low-income students.

Expulsion hearings are designed to afford a fair process to the student undergoing an expulsion. This right is guaranteed by the U.S. Constitution, under the Due Process Clause. California laws governing expulsions are also designed to ensure that the disciplinary sanctions are proportionate to the offense. These protections are critical in light of reports by civil rights groups that zero-tolerance discipline has impacts on students of color and students with disabilities at disproportionately high rates.

After Scott B., the only recourse for the student victim of an unfair dismissal from a charter school in California is to go to court. In contrast, those who allege wrongful expulsion from a public school can access an informal and low-cost administrative process that allows for appeals to the county board of education. Courts will review “dismissals” from charter schools but only if they are “arbitrary or capricious” because there is no underlying right to a hearing. According to the court in Lindsey, the parent would need to produce evidence to demonstrate that the alternative school was significantly inferior to the charter school before a deprivation of property interest could even be contemplated. These burdensome standards make it much more difficult for children and parents to challenge a charter’s dismissal.

Scott B. and Lindsey will fuel the ability of charter schools to be selective about which students they retain, allowing them to deliver better outcomes. Evidence of such selectiveness includes reports of charter schools screening out students with special education needs (in particular, those with severe disabilities) and demonstrating higher rates of suspension and expulsion of students of color than public schools. According to Reuters, “across the United States, charters aggressively screen student applicants, assessing their academic records, parental support, disciplinary history, motivation, special needs and even their citizenship, sometimes in violation of state and federal law.” Stephanie Simon, “Special Report: Class Struggle—How Charter Schools Get Students They Want,” Reuters, Feb. 15, 2013.

Even the U.S. Secretary of Education, Arne Duncan, whose policies have encouraged the establishment of charter schools, acknowledges that “[i]n many cities . . . charters are substantially more likely to suspend and expel students than other public schools.” Valerie Strauss, “Arne Duncan Praises, Slaps Charter Schools,” Wash. Post, July 3, 2013.
In Los Angeles, charter schools have come under heavy criticism for turning away students with disabilities. Howard Blume, “Charter Schools in L.A. Unified to Get More Special Education Money,” L.A. Times, Jan. 5, 2011. This is comparable to concerns raised by communities across the country. A study by the Civil Rights Project at the University of California at Los Angeles expressed alarm at the role of charter schools in creating a higher level of segregation among students who are African American:

Charter schools, in many ways, have more extensive segregation than other public schools. . . . Charter schools attract a higher percentage of black students than traditional public schools, in part because they tend to be located in urban areas. . . . As a result, charter school enrollment patterns display high levels of minority segregation, trends that are particularly severe for black students.


In fact, until very recently, the Office for Civil Rights of the Department of Education (OCR) did not collect data on civil rights outcomes for students in charter schools. OCR will release, for the first time, data related to charter schools for the 2011–2012 school year in early 2014.

While charter schools that receive federal funding must still comply with federal civil rights statutes—such as the Individuals with Disabilities Education Act (IDEA), section 504 of the Rehabilitation Act of 1973, and Title VI of the Civil Rights Act—the lack of oversight by a public board of education means that it is left to students and parents to enforce the laws independently through expensive litigation. The reality is that parents who can afford such actions will more likely locate a better school or have political clout within the charter school that allows them to avoid the worst violations.

Although not raised in the case, a dismissal from the Orange County School of the Arts (OCSA) was likely a tremendous loss of opportunity for Scott B. It appears, from the data, that OCSA is a unique and elite charter school—and a selective one. Ed-Data, Fiscal, Demographic, and Performance Data on California’s K–12 Schools. OCSA receives up to $5 million a year in corporate and private donations. OCSA also receives taxpayer money to support its students. OCSA is ranked as one of the top 10 schools in California, and it touts an academic program that aims to produce high-achieving and motivated scholars. OCSA is also racially and economically exclusive. Half of the students enrolled at OCSA are white, whereas white students comprise only 2.8 percent of students enrolled in the Santa Ana School District, where the charter school is located. Similarly, 6.4 percent of OCSA students are eligible for free and reduced meals, compared with 75.7 percent of students enrolled in the district. The court in Scott B. failed to consider the implications of the ability of a racially and economically selective school to remove students of its own choosing to maintain exclusivity, if that were its inclination.
The structures that allow charter schools to exist are marked by the absence of protections that are traditionally guaranteed by public education, protections that only become apparent and necessary when families and students begin to face a denial of what they were initially promised to be their right. The decisions of *Scott B.* and *Lindsey* may encourage charter schools to push certain students out and make it easier to deny them the benefits of a publicly supported education. The perception that charter schools are open to all students is being called into question by increasing evidence that children who are disadvantaged by a disability, poverty, or being a member of a minority group, or who have been accused of an offense, may not have the same access to charter schools as those are not.

**Keywords**: litigation, children’s rights, charter schools, civil rights, due process, expulsion hearing

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Educating Homeless Youth
By Farrah Champagne

Homeless youth rarely receive the level of education that is necessary for high levels of advancement in our competitive society. Although educating homeless youth may not seem the most pressing issue, it is probably the most important key to their long-term success. Dropping out of high school leads to low earnings and dependence on public assistance. Additionally, a high-school graduate can earn $200,000 more than someone who drops out. This statistic is haunting because according to one study, 75 percent of homeless youth drop out of school before earning their high-school diploma. This leads to high unemployment rates, which negatively affect communities and economic prosperity.

Who Are Homeless Youth?
Homeless youth are children whose primary nighttime residence is in a public area or private place that is not normally used for sleeping accommodations. 42 U.S.C. § 11434a(2)(B)(i). Homeless children live in cars, parks, subway stations, public areas, and abandoned homes. 42 U.S.C. § 11434a(2)(B)(i). In addition, these children sometimes share housing with others after losing their primary place of residence. They also may live in motels, trailer parks, campgrounds, or homeless shelters. Many of them are waiting for foster-care placement. 42 U.S.C. § 11434a(2)(B)(i).

Instability
Homelessness can destroy educational opportunities for children. Compared with other children, homeless youth have a higher rate of delayed development and are more likely to repeat a grade. Homeless students face significant barriers to education including lack of transportation and difficulty with school record transfer and registration requirements. School provides security and stability for homeless youth. It is necessary that homeless youth receive the “educational stability and the opportunity to maintain regular consistent attendance in school so that they acquire the skills necessary to escape poverty and lead productive, healthy lives as adults.” McKinney-Vento Homeless Education Act of 2001, H.R. 623, 107th Cong. § 2(7) (2001).

Homelessness causes so much emotional and physical stress for youth that their ability to succeed in school is greatly diminished. The Texas Education Agency describes some of the difficulties:

Homeless children suffer the loss associated with separation from their home, furniture, belongings and pets; the uncertainty of when they will eat their next meal and where they will sleep during the night; the fear of who might hurt them or their family members as they live in strange and frequently violent environments; the embarrassment of being noticeably poor; and the frustration of not being able to do anything to alleviate their (or their family’s) suffering. To assume that a child could push all of such suffering aside to adequately focus on academic tasks may in many cases be unrealistic.
Children who have no home, are lacking in nutrition or do not have a safe, quiet place to do their homework are at risk of failing out of school. This instability has a negative effect on society as a whole.

**Lack of Transportation**

When children become homeless, they often relocate to areas that are far away from their regular schools. This is problematic and makes it difficult for youth to get to their “school of origin” each day. The McKinney-Vento Act defines the term “school of origin” as “the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.” 42 U.S.C. § 11432(g)(3)(G). The child’s “school of origin” provides stability and helps the child develop by providing a sense of belonging and support. Without this sense of stability, homeless youth do not have the opportunity to receive the life-changing benefits that education provides. In *Brown v. Board of Education*, the U.S. Supreme Court stated,

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.


Education offers homeless youth the opportunity to succeed and escape from poverty. As homeless children move frequently, their education is disrupted, which is detrimental to their overall success. Although homeless youth face many obstacles, lack of transportation is one of their biggest problems. Homeless youth often do not have access to cars and cannot afford public transportation. This reality often leads to poor school attendance.

**Responding to Homeless Youth: The McKinney-Vento Act of 2001**

The McKinney-Vento Act provides education rights to homeless youth. 42 U.S.C. § 11432(g)(3)(A). The act served as a strengthening mechanism for the No Child Left Behind Act, and it requires school districts to help homeless youth in local communities. For example, McKinney-Vento requires that school districts keep homeless kids in their original school district unless it goes against the wishes of the child’s parent or guardian. 42 U.S.C. § 11432(g)(3)(B)(i). In addition, homeless youth are allowed to enroll in new schools even if they lack the necessary documentation. Schools also must provide homeless youth with transportation to and from school. 42 U.S.C. § 11432(g)(1)(J)(iii).

McKinney-Vento provides youth with a measure of educational stability despite unstable living conditions. Stability in education has been identified as a key to success in academics.
McKinney-Vento has its problems, however, because it has yet to be funded adequately, and it does not apply to youth who are in foster care. Some school districts view McKinney-Vento with disdain because it only provides “twenty to thirty dollars per homeless youth.” Melinda Atkinson, Aging Out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth, 43 Harv. C.R.-C.L. L. Rev. 183, 190 (2008). Without adequate funding for transportation services, homeless youth may not be able to remain in their school of choice. There is a significant gap between the creation of the law and the implementation of the law, and this gap will widen unless some changes are made with the funding implementation.

**Enforcing the McKinney-Vento Act Through Litigation**
To prompt schools to fulfill their duty under the McKinney-Vento Act, advocates have used litigation to obtain rights for homeless youth. Litigation helps protect the rights of homeless youth, but it may necessitate the use of a significant amount of resources. There are other strategies, however, that can be employed such as monitoring schools for compliance, public education, and legislative advocacy. These techniques can be used in conjunction with litigation strategies to achieve compliance. Deborah M. Thompson, Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth, 31 Creighton L. Rev. 1209, 1239 (1998).

In *Lampkin v. District of Columbia*, several homeless mothers of school-age children sued the District of Columbia under section 1983 of the Civil Rights Act to enforce educational-service provisions of the McKinney-Vento Act. The National Law Center on Homelessness and Poverty filed suit on behalf of the parents, seeking declaratory and injunctive relief requiring the school system to (1) determine what is in the best interest of the child when placing them in a school; (2) ensure that each homeless child has access to transportation services and meal programs; and (3) provide each homeless child with educational services that are comparable to the services offered to other students. *Lampkin v. District of Columbia*, 27 F.3d 605, 607 (D.C. Cir. 1994).

The U.S. District Court for the District of Columbia dismissed the case, holding that the McKinney-Vento Act was not enforceable under section 1983. The court relied on *Suter v. Artist M.* in its finding that “the only requirement that the Act imposes upon states is the duty to submit a proper application if the state wishes to receive federal funding to educate homeless children.” *Lampkin v. District of Columbia*, No. 92-0910, 1992 U.S. Dist. LEXIS 8049, at *15 (D.D.C. 1992) (citing *Suter v. Artist M.*, 503 U.S. 347 (1992)).

The D.C. Court of Appeals reversed the decision and held that the McKinney-Vento Act imposes obligations that are “specific,” “mandatory,” and “enforceable” under section 1983. On remand, the district court held that the plaintiffs were entitled to declaratory and injunctive relief. *Lampkin v. District of Columbia*, 879 F. Supp. 116, 127 (D.D.C. 1995). The court declared that the District of Columbia failed to (1) address in a timely manner the educational needs of homeless children and (2) provide access to transportation so that homeless children could get to and from school. *Id.*
The court ordered the district to identify each homeless child upon his or her arrival at an intake center, and within 72 hours the district was required to refer the child for educational services, which included transportation. The court also ordered the district to provide bus tokens on a weekly basis to all homeless youth who had to travel more than 1.5 miles to get to school. In addition, the court ordered the district to offer bus tokens to homeless parents who wished to accompany their school-aged child to and from school. The court stated that the district could “inaugurate a busing system specifically for homeless children, or piggyback on the program currently open to special education students.” The district could decide which alternative worked best for achieving the goal of free and adequate transportation for homeless youth.

Instead of complying with the order handed down by the court, the District of Columbia withdrew entirely from the McKinney-Vento program. This ended its obligation to provide assistance to homeless youth. *Lampkin v. District of Columbia*, 886 F. Supp. 56 (D.D.C. 1995). The mayor and city council stated that the cost of compliance with the McKinney-Vento Act was more than they were willing to spend, as it did not survive “its head-on collision with budget realities.” *Id.* at 63. The court dissolved the injunction commenting:

The court's task is clear. It cannot create out of whole cloth a statutory scheme to do good by the City's homeless children. The court must interpret and apply existing law. Given the District's withdrawal from the Program, there is now no law to apply. Defendants have succeeded in circumventing the requirements of the McKinney Act, thereby denying District citizens the federal assistance that would otherwise have been available. If there is to be a remedy, it lies with the District's voters, not with this court.

*Id.*

Although D.C. withdrew from the McKinney-Vento program, a report by the National Law Center found that D.C. public schools have continued to implement provisions of the McKinney-Vento Act. Deborah M. Thompson, *Breaking the Cycle of Poverty: Models of Legal Advocacy to Implement the Educational Promise of the McKinney Act for Homeless Children and Youth*, 31 Creighton L. Rev. 1209, 1242 (1998) (citing Nat'l Law Ctr. on Homelessness & Poverty, *A Foot in the Schoolhouse Door: Progress and Barriers to the Education of Homeless Children* (Sept. 1995)).

**Conclusion**

Homelessness negatively affects a child’s ability to succeed in school. All too often, the failure to succeed in school leads to adult homelessness and poverty. To assist homeless youth, Congress enacted the McKinney-Vento Act, which directed that homeless youth be provided with appropriate public education. Legal advocates can assist homeless youth by monitoring for compliance, educating the public, and litigating cases on their behalf. Advocates can also ensure that homeless youth succeed in their educational pursuits by working together to improve educational services.
Keywords: litigation, pro bono, public interest, civil rights, education, homeless, youth, transportation, McKinney-Vento, children

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NEWS & DEVELOPMENTS

Zero Tolerance Does Not Make Schools Safer

The Center on Youth Justice at the Vera Institute of Justice has released A Generation Later: What We’ve Learned about Zero Tolerance in Schools. The brief gives an overview of research on zero tolerance. Several broad research studies reveal that harsh zero-tolerance discipline policies do not make schools safer but instead put children at risk for dropping out of school and future involvement with the juvenile-justice system. The brief also describes alternatives to zero-tolerance policies that have been shown to keep students in schools and safe.

Keywords: litigation, children’s rights, zero tolerance, discipline policies, schools

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

Report Outlines Right Responses to Noncriminal Status Offenses

The Center on Youth Justice at the Vera Institute of Justice has released a report titled From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses. This report outlines the most effective ways to address noncriminal status offenses, such as truancy, running away, curfew violations, and other risky youth behaviors. The report is also a product of the newly created Status Offense Reform Center at the Vera Institute of Justice (launched in December 2013) which is focused on helping jurisdictions develop a community-based response to non-criminal status offenses, rather than handling these cases through the juvenile court system.

Keywords: litigation, children’s rights, truancy, risky youth behaviors, Center on Youth Justice, Status Offense Reform Center, Vera Institute of Justice, status offenses, noncriminal

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