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Creative Tech Solutions to Juvenile Expungement
By Sharlyn Grace and Chris Rudd – January 15, 2015

How It All Started
In the spring of 2013, the Cook County Justice Advisory Council (JAC), a county government body, and Mikva Challenge, a youth civic engagement nonprofit, teamed up to start the Cook County Juvenile Justice Council (JJC). The JJC is a group of 25 high school and college students who live in Cook County. During its inaugural summer, the JJC was tasked with generating recommendations to reduce the number of youth in the Juvenile Temporary Detention Center—a weighty assignment, no doubt. Chris Rudd, a Mikva staffer with a community organizing background and a passion for social justice, became the JJC’s director.

Every summer, Mikva youth interns spend six weeks researching and answering a framing question focused on an issue area (e.g., juvenile justice, education, health, etc.). The 2013 framing question for the JJC was “What tools, policies, and practices do youth need to positively transition from corrections to community?” In order to tackle a manageable aspect of the huge juvenile justice system, the JJC scaled down and focused specifically on decreasing youth recidivism. JJC youth identified three factors that contributed to high rates of recidivism—education, employment, and housing—to help them answer the framing question. Answering the question wasn’t the end, though. The JJC members were looking to generate solutions and turn their recommendations into concrete solutions for their peers. They identified three areas ripe for intervention:

- **Tools:** digital resources used to achieve a goal (i.e., apps, websites, etc.)
- **Policies:** rules, regulations, and laws
- **Practices:** actions put in place through partnership between youth, advocates, and public officials

Inspiration Strikes
The JJC students participated in a process of project-based learning while answering the framing question. Project-based learning is a teaching method in which students gain knowledge and skills by working for an extended period of time to investigate and respond to a complex question, problem, or challenge. Some youth on the council had first-hand experience with the juvenile justice system, but others had to learn the system’s many mechanisms and nuances from the very beginning. The youth learned about the juvenile justice system and the needs of young people in that system by engaging with expert guest speakers, readings, audio pieces, videos, and interviews with detained youth. Lack of employment opportunities quickly became a recurring theme during their research. The youth being interviewed reported that a huge barrier to employment was their “rap sheets,” or arrest records. While more than 25,000 kids are arrested in Cook County each year, only a few hundred ever apply to expunge the records of their arrests.
The youth on the JJC immediately understood that this was a problem in need of creative solutions.

**JJC’s Report**

At the end of their six-week summer “think tank,” the JJC released their white paper, “What Tools, Policies and Practices Do Youth Need to Positively Transition from Corrections to Community?” The report includes 18 recommendations for Cook County Board President Toni Preckwinkle, such as

- The Chicago Housing Authority should modify its one-strike policy;
- The Department of Juvenile Justice should work with the Cook County Land Bank Association, which buys foreclosed houses and apartment buildings, in order to transform those properties into transitional homes for youth; and
- Incarcerated or detained youth should have a counselor or educational advocate who works with them to develop an individualized Juvenile Educational Plan.

In the fall of 2013, JJC members presented their recommendations to the Cook County politicians and government bodies with power to change actual policies. Savvy about knowing how many asks they could afford, the youth chose four recommendations for President Preckwinkle. They returned to what their detained interviewees had told them they wanted: access to jobs. The JJC suggested that “There should be an app and website for people who are looking for information on expungement.” President Preckwinkle loved the idea, and she tasked the youth members of the JJC with making the site a reality.

**Finding Volunteers to Make a Website**

Now that the JJC knew *what* they wanted to make, they just had to figure out *how* to make it. Throughout the fall of 2013, they searched far and wide for a volunteer coder or web developer willing to help them create an app and/or website that would help young people expunge their juvenile records. On Columbus Day, JJC members joined other youth leaders and community groups to host Justice. Power. Respect, a Youth Justice Awareness Month event. At this event, JJC members met Sharlyn Grace, author of the present article, from LAF (formerly the Legal Assistance Foundation of Metropolitan Chicago). As luck would have it, Grace was coordinating the free Juvenile Expungement Help Desk at the Cook County juvenile court, and outreach was the first word in her job description. With legal expertise now at their disposal, the JJC had two of the three components necessary to create the website in place.

Eventually, an earlier connection came through. When the JJC first came up with the idea for a website, they reached out to Smart Chicago, “a civic organization devoted to improving lives in Chicago through technology.” Smart Chicago’s executive director, Dan O’Neil, had put Rudd in touch with Cathy Deng earlier in the year. Months later, Rudd reached out to Deng about the JJC expungement website. She immediately loved the idea, and all the pieces finally fell into place.
Design Thinking
In December 2013, after weeks of meetings and creating and then recreating the site, Deng and the JJC got together for a “design thinking” session. According to Tim Brown, CEO and president of IDEO, the goal of design thinking is “matching people’s needs with what is technologically feasible and viable as a business strategy.” The JJC didn’t have to think about a business strategy, but they were completely invested in matching young people’s needs with technology and reflecting on the way young people actually engage with technology. JJC members combed through the draft site and identified language that wasn’t youth-friendly, thought of ways that the site could better engage their peers, and even changed the color of the site to better appeal to young users. Throughout the process, JJC members challenged legal jargon and professional design recommendations—each time reminding the “experts” that what they were creating had to be appealing and useful to young people above all else. As a youth-driven project to help young people clear their juvenile records, the only important question became whether or not young people found it helpful and accessible. The design thinking session was a crucial step to maintain the integrity of the project. As usual, the youth in the room generated creative and original ideas that make the site authentically responsive to youth users’ needs. Only six months after the JJC set out to solve juvenile recidivism, Expunge.io launched in January 2014!

Currently, Expunge.io walks users through a series of questions about their own experience with police and courts, eventually evaluating whether they are eligible for juvenile expungement now, in the future, or never. Users deemed eligible are able to submit a form with their contact information directly to the Juvenile Expungement Help Desk at LAF, after which an attorney will contact them and help them navigate the process. When the form is submitted, users who enter their email address automatically receive an email with the next steps, including picking up their rap sheet. Expunge.io also offers a page of “Frequently Asked Questions,” an overview of the steps for seeking expungement, and the option to contact legal aid immediately with questions. A full Spanish language version of the site is accessible directly (see Expunge.io).

The State of Juvenile Records in Illinois
Let’s go back and review the problem that Expunge.io set out to solve. In Illinois, juvenile records include the arrest records of people aged 17 and under, and all delinquency cases handled in juvenile court. Court records of juveniles who are charged as adults are subject to the adult criminal records laws, which are (predictably) much less generous than the juvenile provisions.

Records of juvenile arrests and court cases in Illinois are automatically sealed under Illinois’s Juvenile Court Act (JCA). Automatic sealing is a victory for juvenile advocates in that it provides a clear protection for minors: their records are not publicly available. This protection is incomplete, however, in that the JCA lacks both any definition of the word “sealed” and specific language declaring the records off-limits to employers. Unlike the Criminal Identification Act, which applies to adult records, the JCA does not declare that sealed juvenile records are not to be considered by employers. Sealed juvenile records—remember, that’s all records that are not expunged—are also excluded from the plain language of Illinois’s Human Rights Act, which
restricts employer use of arrest records; the Act prohibits use of only records sealed under the Criminal Identification Act. Many, many young people (and well-meaning parents, advisors, and other adult allies) believe that juvenile records are automatically expunged when the person turns 18. Of those who know that they are sealed, they usually believe that to be sufficient. Unfortunately, the sealed status of juvenile records has created confusion over their accessibility, and leads many to avoid seeking expungement.

Unfortunately, sealing is not enough. At the Juvenile Expungement Help Desk, many people arrive looking for help precisely because their juvenile records appeared in a background check. They are often surprised, and occasionally don’t even remember being arrested. The records mostly showed up in fingerprint-based background checks like the kind often given to applicants for jobs in schools, medical care, or social work. Importantly, the records can also show up on background checks required by public or subsidized housing providers. The records that show up are not just for serious things, or even for court cases in which someone was found guilty of a serious crime. They are often records of mere arrests that were never even referred to juvenile court, and they are often for simple misdemeanors like the battery charges that result from a fight at school. At the help desk, volunteers encounter education students applying to student teach, individuals applying for crossing guard positions with Chicago Public Schools, home healthcare workers, and social workers, all of whom come to us when their background checks turned up juvenile records that were “sealed.” One young woman we assisted had just graduated with a degree in social work and was applying for jobs in her field. She didn’t even know that she had been arrested at age 10 until the record of it was returned through a fingerprint-based background check for her new job with an after-school youth program. Fourteen years later, she was surprised to learn she had been fingerprinted, and there was no charge listed on the rap sheet. We recommend reading Linda Paul’s 2013 story, “Why Is It So Hard to Expunge Juvenile Records in Cook County?”, for an account of a different young woman impacted by a juvenile arrest record at the beginning of her nursing career.

But back to the difference between automatically “sealed” juvenile records and sealed adult records in Illinois: For each of the jobs above, records of mere juvenile arrests regularly appear on background checks. Under the law governing adult criminal records, sealed records—including conviction records—will not appear. Thus it is that in Illinois, these automatically “sealed” juvenile records are more vulnerable to disclosure through fingerprint-based background checks than sealed adult records.

Why Juvenile Expungement?
In some ways, juvenile expungement is a low-hanging fruit. Most juvenile records in Illinois are eligible to be expunged eventually. In fact, the only records that are categorically ineligible for expungement are those in which the young person was found guilty of first-degree murder or a sex offense that would be a felony if committed by an adult. The vast majority of records—over 80 percent—are eligible for expungement right when the person with the record turns 18, provided the person does not have any open juvenile court cases. All juvenile arrests that don’t result in the filing of charges in court, court cases that are dismissed, court cases in which the
young person successfully completes a sentence of supervision, and court cases with guilty findings for low-level misdemeanors are eligible for expungement at age 18. For those sorts of records, eligibility does not depend on the other content of the individual’s record; regardless of whether he or she has adult convictions or other juvenile cases that can’t be expunged, those eligible arrests and/or cases will still be expungeable. Young people found guilty of felonies or class A misdemeanors must wait until they are at least 21 years old and five years has passed since they completed their sentence, and (the biggest hurdle for many) they must have no adult convictions of any kind.

Despite its availability, people were not taking advantage of juvenile expungement to erase their records. The numbers in Cook County bear that out starkly. With its concentration of social service agencies serving youth and legal service providers, Cook County should be well positioned to assist people hoping to clear their juvenile records. Yet in 2013, there were 26,255 juvenile arrests. Linda Paul, “No Criminal Charges? Wipe That Arrest Record Clean at 18” (May 12, 2014). Over 20,000 of those arrests did not result in petitions for adjudication filed in the juvenile court. That same year (2013), there were a mere 660 petitions for juvenile expungement filed in Cook County, by only 378 people. (Because each arrest requires a separate petition for expungement, people with more than one eligible arrest regularly file more than one petition.) Though most arrests that happen are not expungeable that same year because one must be at least 18 to receive a juvenile expungement, creating a lag in eligibility, previous years in Cook County had more juvenile arrests. Quite simply, only a very small percentage of the eligible people chose to expunge their records. Those were the statistics that the JJC confronted, and the reason they chose to focus on juvenile expungement as a solution.

**Expunge.io in Action and the Future**

Since launching in January 2014, Expunge.io has appeared in over 20 media stories. Some of our favorites are a JJC member’s own expungement story as captured on State of the Re:Union and a DNAinfo article that interviews both Rudd and JJC members. Press about Expunge.io helped raise awareness about juvenile expungement, and within the first couple of months, over 150 people had submitted their eligibility forms to start the expungement process. Over a dozen people have completed the expungement process using the services of the Juvenile Expungement Help Desk after first discovering their eligibility through Expunge.io.

A very exciting benefit made possible by Deng’s decision to use all open source software on GitHub is the ease with which youth advocates in other states who were inspired by Expunge.io can create their own versions. Since Expunge.io’s launch, both Maryland and Louisiana have created their own versions of the website:

- **Expunge Maryland** by Advocates for Children and Youth features information for both juvenile and adult record relief.
- **Expunge-LA** by the Louisiana Center for Children’s Rights.
For its part, the JJC continues to improve and develop Expunge.io, including by working with Smart Chicago to host focus groups in which youth users navigate the website and document what they like and don’t like. In late November, students at Fenger Academy High School in Roseland, a far Southside neighborhood in Chicago, became the most recent evaluators of Expunge.io’s usefulness.

The JJC has also recently expanded its interests to adult records. Mikva Challenge and Smart Chicago have teamed up with Thrive Chicago and Cabrini Green Legal Aid to develop a website (similar to Expunge.io) that will provide people with information about the many different forms of relief from adult criminal records. Stay tuned to the JJC’s website for information about what they’ll do next!

**Keywords:** litigation, children’s rights, Juvenile Justice Council, recidivism, juvenile record, expungement, technology

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Social Media: Children’s Lawyer’s Friend and Foe
By Jennifer Baum and Sarah N. Fox – January 15, 2015

Social media is taking over the globe. The Pew Research Internet Project states that in the United States, 95 percent of 12- to 17-year-old children are online. Teenagers are also sharing more and more information online: 91 percent of teenagers post a photo of themselves, 92 percent post their real name, and 71 percent post the city or town where they live. “Teens Fact Sheet,” Pew Res. Internet Project (Sept. 2012). This information, in the wrong hands, can be harmful to a child. The Children’s Online Privacy Protection Rule, designed to safeguard children’s information and access online, is a start, but it defines a child as someone under age 13, thus excluding the majority of underage Internet users: kids ages 13–18.

As attorneys for children, therefore, it is important that we talk to our clients about the use—and misuse—of social media. Children need to be aware that what they share on social media is never completely private and can be used against them, or against people they care about. One New York attorney notes that her office always advises kids to take down their social media sites completely once a case has begun, especially where the parties in the case are known to each other, but kids seldom comply (or they report they have complied when they haven’t). This is because the draw of social media, especially on teens, is extremely powerful. The key point for attorneys to remember about electronic communication is that privacy is never guaranteed. As the child’s lawyer, you will want to protect your client’s electronic privacy, while exploiting gaps in the electronic privacy of others.

The first, and most secure, form of defense is to not use social media at all. Many children’s lawyers give out this advice at the first client meeting. But for those who insist on maintaining their social media accounts, there are some options. The first level of protection is to use privacy controls. These controls restrict who can see what you have submitted to the site. Unfortunately, many people choose not to use these controls and then everything they do becomes public information, which can spell litigation disaster.

For starters, many people find it convenient to leave their computers, phones, and other devices logged in to different websites. The obvious risk, however, is that anyone using that device will have automatic access to the logged in accounts. Not only does this mean the account holder’s privacy is compromised, it also means that the account holder’s identity is compromised, because unauthorized users can access the account and take actions, make purchases, or even post something incriminating or harassing under the veil of anonymity. But even without staying logged in to a site, the information submitted still is not shielded from the public: Once something is shared on social media, anyone who sees it can take a screenshot from any computer or phone, and retain it forever. This is true even if the original post is later deleted. If someone saw it before it was deleted and took a screenshot, they have it as long as they choose to retain it. Moreover, deleted items can often still be discovered through websites that search cached (old) pages. A cached page is a version of a website saved at a previous time and stored. “Delete” does not always mean “delete.”
Children and teenagers do not always understand this and often will post things they later regret, or that are harmful to them. For those doing investigations (defense lawyers, prosecutors, police), social media can often provide substantial background into what is going on. For this reason, police now routinely ask about social media accounts at the earliest stages of an investigation, capturing data before privacy settings are changed or information is deleted. For defense lawyers, finding a public profile means getting an opportunity to look through all of a person’s posts and photos. This may provide a gold mine of free discovery: who various people associate with, their physical locations at particular points in time, what activities people were engaged in and when, what their thoughts and feeling are about various circumstances or events, or what their future plans might be.

Another, less obvious, aspect of online privacy includes location trackers. Many social media sites allow (or default to) programs that can identify the location of the user, down to a few feet. According to one juvenile defense attorney:

If I had one piece of advice to give to everyone in high school it would be not to steal an iPhone. ‘Find my iPhone’ is not your friend. The police can find you on the subway with it: the kid comes up out of the subway, the police are waiting for him, the kid matches the complainant’s description, [and that’s probable cause].

Location trackers can also be used to blow up alibis, or as circumstantial evidence. Many people do not realize they are being tracked in this manner, or that location trackers can be managed (turned on and off).

A tech-savvy attorney can use social media to supplement factual investigations in creative ways. In one child welfare case, a young client had uploaded videos of herself singing in her shelter apartment prior to the allegations, and the attorney who found the videos online got to “turn back time” to see the conditions in the home prior to the date the petition had been filed.

Most sites have at least a couple of different levels of public and private settings. While anyone at all can view a public setting or page, absent a search warrant, membership in a particular form of social media is required in order to view others’ pages. Some pages or items can be restricted to approved users, while others allow varying degrees of access. This can create an issue for attorneys seeking out private information, as ethical considerations come into play for attorneys initiating a “friend” request (access request) to another user. For this reason, the better practice is for an attorney not to use his or her own social media account to explore the accounts or pages of others, but for the client to do so. One attorney noted, “I don’t impersonate anyone. When I want to see my client’s page I have them bring it up in my office, and I ask them to navigate around and show me.” In cases where the parties are already known to each other, there is a good chance that friend requests or other links have already be established, and much information can be obtained. Prosecutors can have the complaining witness log in, because if a complainant is “online friends” with a respondent, each can see the other’s pages.
Clients also need to be aware that no-contact orders now routinely include social media. If there are privacy settings in place, it is likely that no one will know the contact is taking place other than the two parties—until one of the parties complains, that is.

Because of all the different ways social media can play into a legal case, it is important for attorneys to understand at least the basics of social media, so they can properly advise their clients about it. So even if you don’t use it, your clients do, and those clients need to understand how their social media use (or misuse) can impact their rights and remedies.

Facebook
Facebook is one of the original forms of social media. While you may have heard that Facebook’s popularity is down, it is still very much in use, and needs to be understood. Members (users) create a profile and have a “wall.” This is a digital page where you can post text, links, and pictures. Sharing is done through “friend” lists: when a user adds a friend, the friend can see what the user has posted. They can also share it with their other friends. Messages can be left on the wall, or sent privately. Upon logging in to the site, a user sees a feed, which is a list of activity by friends. The feed allows a user to see at a glance what is happening on friends’ sites, and also to respond to that activity with comments or “likes.”

Facebook has different levels of privacy, and while the default privacy setting is currently “friends only,” this is a recent change. Previously, the default setting was public. That meant that anyone at all could see what was posted, unless the user affirmatively changed the privacy settings. Users can choose the level of privacy for each post and each picture taken, and it is always a good idea to check the privacy setting prior to each posting.

In addition to providing a wall and a feed, Facebook also allows users to “message” each other. Private conversations may be had among members, but entire conversations can be forwarded to nonparticipants, and new users can be added to group conversations, allowing pretty much anyone to view all prior messages in that conversation. This means that private conversations are never really private, as they depend on the voluntary compliance of other users.

Facebook provides a treasure trove of useful information for law enforcement and defense attorneys alike. One example of the usefulness of finding inner thoughts made public through Facebook is discussed in *In re D.T.J.*, 956 F. Supp. 2d 523, 543 (S.D.N.Y. 2013), in which voluminous Facebook diatribes by a father toward his daughter were admitted into evidence in a Hague Convention child abduction trial. Another example includes the use of a child’s public Facebook posts as identity evidence in a series of burglaries. See *In re D.O.*, 840 N.W.2d 641 (N.D. Sup. Ct. 2013). Minutes after robberies, another defendant posted Facebook photos and messages of himself holding cash and attempting to fence stolen goods. See *State v. Phipps*, 2014-Ohio-2905 (Ct. App.). A juvenile once posted his profile to the page of a known graffiti crew. See *In re Isaac C.*, No B250475, 2014 WL 931033 (Cal. Ct. App. Mar. 10, 2014). Facebook has also been used to violate no-contact orders, see *In re A.H.*, No. HO39967, 2014

Facebook posts, like other electronic documents, can be authenticated in any admissible way, including through circumstantial evidence. In re L.P., 749 S.E.2d 389, 393 (Ga. Ct. App. 2013). In sum, Facebook posters should beware that anything they post or message can be used against them.

**Instagram**

Instagram is a newcomer to the social media world. Launched in 2010, it is an online photo- and video-sharing social network that allows users to upload pictures or short videos with descriptions, and share them publicly or privately with “followers.” According to Instagram’s Parents’ Guide, the minimum age for use is 13. As with all other forms of social media, Instagram notes that the safest and most appropriate way for kids to participate in photo file sharing is with appropriate adult supervision—and as with all other forms of social media, that does not always happen.

Photos posted to Instagram can easily be shared with a variety of other social media platforms, including Facebook, Twitter, Tumblr, and Flickr. Even if an item is not cross-posted to another platform, it will appear on the user’s web profile page and on friends’ feeds. Instagram users can place a description, their thoughts, or anything else online with their photo. Often, people will use a description with a hashtag in front of it, for example, #selfie. There is also a section of Instagram called Explore. This provides a place to search for specific people or hashtags. A search for #selfie will result in photos from people with public profiles who put #selfie in the description section of their photo.

Privacy on this site is also varied. The “friends only” setting limits views to approved contacts, but any contact can be approved, even contact by strangers. Public settings are just that, and can be viewed by anyone. Users should know that despite privacy settings that limit access to account activity, an Instagram user’s profile is always public. Also, there is a “locations” button that uses a phone’s GPS to identify the location the photo was taken, and once set it remains set such that locations are updated automatically.

Instagram has been used by parents to post photos of themselves violating no-contact orders with children, by children to post pictures of themselves using illicit substances or engaging in other inappropriate activities, and by law enforcement to aid in criminal investigations.

**Twitter**

Twitter is a social networking site that is meant to be public. “Twitter does not guarantee any of its users complete privacy. Additionally, Twitter notifies its users that their Tweets, on default account settings, will be available for the whole world to see. . . . Tweets [are], by definition
public. . . . Indeed, that is the very nature and purpose of Twitter.” *People v. Harris*, 945 N.Y.S.2d 505, 509–10 (Crim. Ct. 2012).

Tweets are messages sent through Twitter that contain 140 or fewer characters. Tweets can be sent by SMS text, from a Twitter app, or through Twitter’s website. Users “follow” one another, and tweets appear in a feed on the user’s account page.

Privacy on this site can be managed, but the site is essentially public, and that is the default setting for new accounts. Users follow other users to view what they are saying; followers subscribe to the account holder’s Twitter feed. Caution is advised because, as with all other forms of social media, information can be forwarded with the click of a button; in the Twittersphere, this is known as “re-tweeting,” and is a common practice and one of the most popular ways of sharing information by Twitter.

**Snapchat**

Snapchat allows people to send exploding (self-destructing) photos and videos to one or more people at a time. The content is referred to as a “snap.” Users also have the ability to add text or draw on the photos before sending them. What makes Snapchat different from other forms of social media is that the user sets a time limit for how long the photo or video can be seen by the recipient of between one and 10 seconds. Once the time limit is up, the snap is hidden from whatever device the recipient is using and deleted from Snapchat’s servers.

Privacy is a huge problem on this site. For starters, the site appallingly advises users who are under age 13 that they can get around the site’s safety limitations if they “just delete [their account] and start over with a fictitious birth date.” *A Parent’s Guide to Snapchat* (2013). The site also advises:

Snapchat lets you know when your message has been opened and—usually—if it has been captured and saved by the recipient. We say “usually” because it doesn’t work 100% of the time and there are workarounds, including some “hacks” and the ability to take a picture of the screen with a camera, including a friend’s cell phone camera.

Users, including kids, sometimes send sexually explicit snaps (a practice known as “sexting”) under the mistaken belief that the content really will disappear when the time limit expires. But as noted above, this is not always true. Attorneys should be aware that in some states, sexting laws apply equally to children and adults, meaning that in addition to criminalizing sexting between an adult and a child, kids can be prosecuted for sexting with one another.

Another concern is that Snapchat associates phone numbers with user names. That information has been hacked in the past. It provided the hackers with phone numbers and matching names. After the hack, many people received spam snaps. Some of those were pornographic ads. There is also a grave concern that teenagers continue to use this medium for sexting, something Snapchat addresses in its parent guide.
In short, Snapchat offers all of the lure of privacy and safety, with none of the guarantees. Be careful with Snapchat.

**PVP Servers**
PVP servers are online gaming sites that allow messaging and information exchange. “Moderators” are supposed to monitor the ages and messages of users, but conversations scroll by quickly and disappear. As with all other forms of social media, content can be captured by screenshot or users’ cameras, and nothing is really ever private. Nothing prevents users from exchanging information about more intrusive ways to communicate, such as email and Skype.

**Video Conferencing Services (Skype, FaceTime)**
Video conferencing services such as Skype and FaceTime provide a way to make video and voice calls, send instant messages, and participate in file sharing. Two or more users with a video conference account can call each other using their device’s built-in camera and have a face-to-face conversation. The conversations are not recorded, but third-party software has been developed that does allow one user to record another. And screenshots can still be made of any instant messaging sent through video conferencing. There are privacy controls, but kids often do not understand the implications of accepting a request for a video call from a stranger (or complainant, or other person with whom a child should not have contact). Unwanted live (real-time) video contact with others is possible without carefully managing privacy settings.

Skype has been used to maintain parental or sibling bonds in child welfare cases, and witnesses have testified via Skype.

**Conclusion**
Given the prevalence of social media use by children and youth, it is essential that children’s lawyers have at least a basic understanding of these platforms in order to advise their clients. One of the most critical things to convey to child clients is that there is no privacy online—everything they post should be considered public and can be used against them.

**Keywords:** litigation, children’s rights, social media, privacy settings, public information, identity, location trackers, sexting

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Courtroom Educational Advocacy for Children in Foster Care
By Kristin Kelly – January 15, 2015

Children in foster care need a solid education to help ensure a successful future. For the almost 400,000 children and youth involved in the foster care system, educational success can be a positive counterweight to their experiences of abuse, neglect, and separation. Unfortunately, research demonstrates that many students in foster care have very poor educational outcomes. See Nat’l Working Grp. on Foster Care, Research Highlights on Education and Foster Care (Jan. 2014). Foster youth often have low standardized test scores in reading and math; high levels of grade retention, discipline, and drop-out; and far lower high school and college graduation rates. One recent statewide study in California found that students in foster care performed worse than other vulnerable populations, including children with disabilities receiving special education, English Language Learners, and low income students. See WestEd, The Invisible Achievement Gap Report: Key Findings (2014). The achievement gap for students in foster care is real, and strong legal advocacy is essential to overcoming the many barriers to success that these children encounter.

Many children in foster care change schools frequently, both when they enter foster care and when their living placements change while in care. Unfortunately, these school changes often correspond with enrollment delays and the loss of earned credits in the new school districts. Students in foster care are disproportionately suspended or expelled from school and placed in restrictive school programs or schools located in residential settings. Despite their disproportionate need for special help such as special education, these students are often unidentified or underserved. Each of these problems is compounded by the lack of any legally authorized education decision maker or advocate due to the child’s placement in foster care.

How Judges Can Assist with Educational Success
Judges have a unique and important role to play in the education of foster youth. Judges are required to address children’s safety, permanency, and well-being needs—which of course includes education. Without clear direction from the courts, caseworkers and child service providers may not prioritize education issues or fully understand legal requirements. Agency staff and child advocates lack the court’s authority to appoint an education decision maker or to make orders.

Judges should ask questions about a child’s education at each hearing and should make sure that information about the child’s education is included in court reports. Perhaps most important, the judge should ask the youth directly about the youth’s education experience, goals, strengths, and challenges.

The court should ensure that an order is in place that clarifies who holds the education decision-making rights for the child (for both general and special education students), and the order should be comprehensive and specific. Of course, this person should generally be the child’s parent(s), unless the court determines it is necessary to limit the parent’s education decision-
making rights. If the parents cannot retain their educational rights, this may require the appointment of a surrogate parent. The court order can also direct a party to pursue education issues in the school, such as requiring parties to pursue a referral for early intervention or special education services.

Judicial oversight is especially critical for school stability and continuity. The order should verify that the child’s case plan includes a plan to ensure school stability and continuity, as required by federal law. When a living placement change is proposed, the court should consider whether the child should stay in the same school. Judges can order a party before the court to arrange and/or pay for transportation when needed for the child to remain in the same school and make sure that the agency is making school selection decisions in the child’s best interest. If it is in the child’s best interest to change schools, the judge needs to ensure that the child is immediately enrolled in a new school, with all school records transferred.

School stability, prompt school enrollment, and special help for eligible children with disabilities are all required by federal (and many state) laws. Judges are needed to ensure that the parties before the court and the multiple agencies that are often involved in the education and care of court-involved youth are making sure that these children receive these legal protections. Addressing education needs can also help achieve placement stability and permanency for youth in care. Children who are on track educationally, attending school regularly, and not having behavior problems at school can often return home more quickly and are more likely to find permanent foster or adoptive families.

How the Child’s Representative Can Advocate for Education Needs
The child’s attorney, guardian ad litem (GAL), or court-appointed special advocate (CASA) should report education information and issues to the court at every hearing. The lawyer or advocate should review the child’s education records and should speak with the child about his or her education goals—and then should advocate for these goals (and the services needed to achieve these goals) with other parties and the court. Critical information should be gathered and shared with the judge such as the child’s grades, attendance record, and whether the child is (or should be) receiving special education or other supportive services. The lawyer or advocate should also ensure that an educational decision maker is in place for the child.

The lawyer or advocate should work with agency staff to ensure that education is a priority for each child and that the child’s case plan addresses school stability and continuity. The advocate should work with the caseworker to make sure that he or she obtains and includes required education information in the case plan, and that the caseworker collaborates effectively with the school on education stability and other school-related issues.

Model Jurisdictions
A number of states, including California, Colorado, New York, Oregon, and Pennsylvania, have adopted judicial rules or statutes that require judges to make education inquiries, findings, and orders. Pennsylvania adopted Rules of Juvenile Court Procedure that require juvenile courts to
consider, make findings, and issue appropriate orders around education at each stage of the judicial process—from the initial shelter hearing to the permanency hearing. California passed a state law requiring juvenile courts to identify a child’s education rights holder at each and every hearing, Cal. Welf. & Inst. Code § 726. The law also explains the requirements for being an education rights holder for a child in foster care. The corresponding court order clearly lays out the framework for limiting a parent’s decision-making rights and appointing a new decision maker if necessary.

Publications on How to Advocate in the Courtroom

The National Association of Counsel for Children’s (NACC’s) cornerstone publication, Child Welfare Law and Practice (the Red Book) is a go-to resource for lawyers seeking policy and practice advice. Among other critical topics, the Red Book includes a chapter on educational advocacy for children in foster care that provides a summary of relevant laws and links to additional resources.

The Blueprint for Change: Education Success for Children in Foster Care, written by the Legal Center for Foster Care and Education, is a framework for advocates seeking to promote positive education outcomes for children in foster care. There are eight goals for youth, with corresponding benchmarks that indicate progress. Following each goal, there are national, state, and local examples of policies, programs, or laws that promote the goals and benchmarks.

Tools and Training Materials for Judges and Attorneys

In 2008, the National Council of Juvenile and Family Court Judges (NCJFCJ) released Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care. Many states, including Arizona, Iowa, New Jersey, Ohio, Oregon, Texas, and Utah, as well as Washington, D.C., are using protocols and checklists to systematize their courts’ review process.

Through a project known as “Kids in School Rule!” Hamilton County Job and Family Services developed an “Education Court Report” form. The Legal Center for Foster Care and Education has adapted this tool and created a template for other jurisdictions. (This document will open in your word processing software.)

The Legal Center for Foster Care and Education also developed a short school stability “Best Interest Determination Evaluation Form” to support jurisdictions in making the “best interest” determinations as required by the education components of the Fostering Connections Act. This checklist will help child welfare staff respond to courts’ inquiries regarding how school stability decisions have been made for specific children.

The National Child Welfare Resource Center on Legal and Judicial Issues, together with the Legal Center for Foster Care and Education, developed a full-day curriculum around courtroom-based education advocacy for children in care. This curriculum is designed for judges, children’s attorneys, GALs, child welfare agency attorneys, parents’ attorneys, and anyone else interested
in learning more about courtroom-based education advocacy for children in out-of-home care. It includes an overview of the laws related to the education needs of children in care, including special education. Also included are laws relating to young children and adolescents (including involving youth in their education planning and cases), and education stability and continuity. Additionally, it includes two mock courtroom activities, designed to improve participants’ advocacy skills relating to education issues. This curriculum can be modified for various jurisdictions, audiences, and time available. If you are interested in training on courtroom education advocacy or have other technical assistance requests, please contact the Legal Center for Foster Care and Education.

How Courts Can Measure Progress on Foster Care and Education
Critical to improving education advocacy and outcomes for children in foster care is improved data collection and information sharing. To guide courts in identifying education measures to track through court automated systems, the National Center for State Courts worked collaboratively with organizations and experts from around the country to develop specific measures for education, detailed in Educational Well-Being: Court Outcome Measures for Children in Foster Care (2011). These measures can be used to identify the data elements that would help measure progress, as well as serve as a baseline to compare various interventions.

More Information
In 2007, three nationally respected advocates for the educational rights of children in foster care—the American Bar Association Center on Children and the Law, the Education Law Center, and the Juvenile Law Center—formed the Legal Center for Foster Care and Education. The Legal Center provides technical assistance and information on legal and policy matters affecting the education of children in the foster care system and advocates for reforms that will improve educational outcomes for these children.

Whether you are involved with the court (a judge, attorney, GAL, or CASA); a child welfare agency (a caseworker, social worker, investigator, supervisor, or administrator); a school (a teacher, guidance counselor, administrator, or social worker); or another kind of advocate for children in care, you can make a difference. The Legal Center for Foster Care and Education is here to help you.

- Connect with us and other advocates from around the country and stay up-to-date by joining our listserv and following us on Twitter.
- Access tools and resources about the wide variety of issues impacting education and foster care.

Search our database for tools and resources on particular topics or states.

Keywords: litigation, children’s rights, foster care, education, special education, school stability, best interest

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Due Process Rights in Charter Schools
By Kevin C. Moyer – January 15, 2015

Legal experts, advocates, and even our federal agencies are becoming increasingly concerned that the due process rights of youth, particularly black students and those with special educational needs, are being overlooked in public charter schools. While charter schools must comply with various constitutional and statutory requirements, in many respects, charter schools are governed and regulated in a different—often less restrictive—manner than traditional public schools. Available data and anecdotal evidence suggest a systematic (although not universal) problem with the manner in which charter schools are disciplining their students.

The webinar entitled “Due Process Rights in Charter Schools” explores this increasingly important subject matter, with a focus on the manner in which minority students are being disparately affected by charter school disciplinary practices. The webinar was sponsored by the American Bar Association Center for Professional Development, Section of Litigation Children’s Rights Litigation Committee, Commission on Disability Rights, and Section of State and Local Government Law, and featured a panel comprised of attorneys and experts with extensive knowledge of and unique perspectives on the subjects of charter schools and student rights. The webinar discussed the following primary topics addressed below: (1) an overview of state charter schools; (2) the legal obligations of charter schools; (3) relevant data regarding disciplinary practices of charter schools; and (4) best practices to ensure compliance with legal obligations and due process requirements.

What Are Charter Schools?
Charter schools are becoming an increasingly prominent component of our public educational system. For example, in California alone, there are now over 1,200 charter schools. In Washington, D.C., approximately 36,000 students out of approximately 80,000—nearly 50 percent of all students in the public school system—now attend charter schools. Thus, understanding the manner in which charter schools operate and are regulated is essential in addressing public education issues at the macro level.

As the panel explained, a charter school is, essentially, a public school (a school that receives public funding) that operates independently of the state public school system. Some additional distinguishing characteristics of charter schools from traditional public schools are as follows:

- Charter schools are statutorily exempt from some of the laws and rules that apply to public schools, including the state curricular, operational, and management requirements;
- Charter schools are governed by performance contract or charter petition (rather than a locally elected school board of community members);
- Charter schools focus on an educational mission (rather than a designated curriculum that applies to every school in the state);
- Charter schools can be operated by organizational entities, including for-profit organizations; and
Parents and guardians can select the charter school they wish their child to attend (rather than being assigned by geographic location).

It is important to understand these differences in addressing particular issues that may be affecting student rights or a charter school’s compliance with its legal obligations.

While they are independent in many respects, charter schools still must be authorized by a state or local educational agency. For example, a charter school must have its performance contract or charter petition approved prior to its implementation. This is important because such documents may set forth the charter school’s educational mission and disciplinary policies and procedures. Additionally, as with other public schools, charter schools are free of tuition and must be nonsectarian. And, perhaps most importantly, charter schools are subject to various federal antidiscrimination laws and due process requirements.

What Law Governs Charter Schools?
As a fundamental starting point, children in all public schools have baseline constitutional rights. *Goss v. Lopez*, 419 U.S. 565, 574 (1975) (students in public schools “do not ‘shed their constitutional rights’ at the schoolhouse door” (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969))). As explained by the United States Supreme Court in *Goss*:

The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.

419 U.S. at 574 (emphasis added). The *Goss* opinion mandates that minimum due process rights be afforded to public school students facing serious suspensions. Such rights include notice and a fair opportunity to be heard. *Goss*, 419 U.S. at 582–83. Of course, these rights apply to children in pubic charter schools as well.

In addition to protections afforded under the United States Constitution, charter schools are also constrained by other federal laws, including:

- **Title IV of the Civil Rights Act of 1964** (CRA), which prohibits discrimination in public elementary and secondary schools based on race, color, national origin, sex, and religion;
- **Title VI of the CRA**, which also prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance;
- **Title IX of the Education Amendments of 1972**, which prohibits discrimination on the basis of sex in any federally funded education program or activity;
• The **Equal Educational Opportunities Act of 1974**, which requires state and local education agencies to take appropriate action to overcome language barriers that impede equal participation by students in the agencies’ instructional programs; and

• **Title II of the Americans with Disabilities Act of 1990**, which prohibits discrimination against people with disabilities.

These laws, and others, are enforced by the Department of Justice, the Department of Education, and by private action. Yet, notwithstanding the applicability of these various laws and requirements, evidence suggests that students of color and students with disabilities are being disparately affected by charter school disciplinary procedures and practices.

**Due Process Rights in Charter Schools: What Does the Data Say?**

The Department of Education’s **Civil Rights Data Collection** (CRDC) is and has been a valuable tool in furthering the national understanding of potential constitutional and civil rights issues in public schools. The CRDC collects data on a variety of key educational and civil rights issues from all of the nation’s public schools. Every year, all public schools are required to divulge to the Department of Education information regarding suspensions and expulsions, and about students who have been disciplined, such as race, gender, religion, etc. The CRDC is critical to civil rights enforcement and improved public awareness.

Advocates have become concerned with disparities in discipline and possible violation of due process in charter schools as a result of the information the CRDC has revealed. For example, we know that black males are not significantly more prone to misbehave in or out of school. However, in charter schools around the country, 20 percent of black males were suspended compared to just 6 percent of white males in the 2011–12 academic year. There was also a similar suspension ratio with respect to black females compared to white females (12 percent and 2 percent, respectively). Students with disabilities also tend to be suspended at a higher rate, around 13 percent in the 2011–12 academic year. These numbers make clear that students in charter schools are not being treated equally as the law requires.

Although the panel explained that charter schools discipline students at roughly the same rate as traditional public schools, charter schools more frequently discipline students though suspensions and expulsions. Advocates are concerned with the sheer number of suspensions in charter schools around the nation. In one year, according to the CRDC, there were over 350 charter schools that suspended 25 percent of their total enrollment. While expulsion data is more difficult to interpret due to youth privacy rights and other variables, experts suggest expulsions are also far too prevalent at charter schools. Moreover, minority students are at a higher risk of attending high-suspending/expelling charter schools. The data, therefore, raises serious concerns about the impact charter schools are having on the civil rights of youth students, especially students of color.

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Further, as the panelists explained, students are often being suspended and expelled for minor infractions. For example, most schools have rules in student codes of conduct or in the school’s governing documents against “willful defiance” or “willful disruption,” which are essentially catchalls that can encompass any range of misbehavior that a school official subjectively believes inappropriate. The data reveals that minorities and students with disabilities are more likely to be found to have violated these vague school rules. Without appropriate procedures in place, it is easy to see how disparate and unfair treatment of particular students can persist.

Though this data is critical to understanding the issues, advocates are concerned that the data received by the Department of Education may not tell the whole story, based on anecdotes from students and parents. Practices such as “counseling students out” of charter schools are sometimes used by charter schools as a substitute for expulsion because students can be encouraged to return to their neighborhood schools. One panelist told the story of a charter school principal who would call police officers for minor student infractions after obtaining confessions from students who had no legitimate reason to suspect the police would be notified of their behavior. These practices are difficult to track but demonstrate approaches that can ultimately contribute to the school-to-prison pipeline.

**Best Practices of Charter Schools and How to Comply with the Law**

It is important to note that although the problems highlighted above are widespread, they not universal among charter schools. Moreover, the same bad practices exist in traditional public schools as well. However, due to the unique operational framework of charter schools and the lack of direct state control, advocates believe that public charter schools with high suspending/expelling rates are particularly deserving of public scrutiny. Those charters that suspend at higher rates are those that are most likely violating students’ due process rights. Expelling or suspending students for minor infractions without providing the opportunity to confront evidence or accusers is a common practice, which must be recognized and addressed. The federal government suggests that charter schools look at information provided in the CRDC as a starting point.

The panel suggested a variety of procedures and practices to enable charter schools to comply with their legal obligations. Such “best practices” should include an opportunity to meet with an administrator to determine what the behavior was and to allow the student to explain himself or herself. The Court explained in *Goss* that these practices are essential components of due process compliance. An administrative panel to confirm or deny the suggested punishment could add an additional layer of protection that is absent in many charter school practices. Such a process would usually satisfy due process minimum requirements and help students understand the basis for their discipline so that they can learn and adjust their behavior accordingly.

The panel of experts also suggested that charter schools look to the practices of lower-suspending charter schools, which tend to embrace restorative practices to keep suspensions low. Restorative practices may include engaging the community, mentoring programs, increased cooperation with parents, and increased communication with students and those being
disciplined. These practices can help charter schools in uncovering the root of the problem so that it can be properly addressed. As the information in the CRDC suggests, there is little actual method behind the madness of suspending and expelling students at higher rates. Significant is the fact that those schools with lower suspension and expulsion rates also tend to have higher test scores.

To assist charter schools in their compliance with federal law, the Department of Education and the Department of Justice issued federal guidance in 2014 through the form of two official letters on school discipline containing recommendations to help schools develop and implement student discipline policies in an equitable manner, and in a way that complies with federal law. See U.S. Dep’t of Justice & U.S. Dep’t of Educ., “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline” (Jan. 8, 2014). The letters also include evidence-based alternatives to exclusionary discipline, such as restorative practices, cared interventions, and parent and community engagement. The purpose of the guidance letters is to equip public school officials with an array of tools to support positive student behavior—thereby providing a range of options to prevent and address misconduct—that will both promote safety and avoid the use of discipline policies that are discriminatory or inappropriate.

Public schools in general must move away from the idea that we should remove all the “bad kids” from class so that the “good kids” can benefit. All kids have a right to a quality education, and it must not be easily disregarded on the basis of isolated instances of misbehavior. As public educators, charter schools have an obligation, of both the legal and moral variety, to ensure all students’ right to a legitimate public education is protected against unfair and discriminatory practices.

Conclusion
Advocates and experts are increasingly concerned that students’ due process rights are being disregarded in charter schools without constitutionally sufficient cause. The available evidence indicates that students of color and those with special education needs are being disparately impacted by charter school disciplinary practices, just as they are impacted at traditional schools. We must begin to recognize this reality in order to address these problems.

As charter schools are operated more independently than traditional public schools, however, perhaps they are uniquely tailored for improvement. With the proper operational framework in place, together with recent guidance from the Department of Education and the Department of Justice on civil rights and due process requirements, charter schools may begin to take appropriate steps in addressing the due process–related concerns that are the subject of the webinar “Due Process Rights in Charter Schools.”

To listen to this webinar, visit the Programs & Materials page.

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Keywords: woman advocate, litigation, charter schools, disciplinary practices, minority students, disabled students, civil rights, discrimination, due process, restorative practices

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Better Education for America's Incarcerated Youth

On December 8, 2014, the U.S. Department of Justice and the U.S. Department of Education announced the release of a Correctional Education Guidance Package to help states and local agencies strengthen the quality of education services provided to America’s estimated 60,000 young people in confinement every day. This guidance package builds on recommendations in the My Brother’s Keeper Task Force report released in May to “reform the juvenile and criminal justice systems to reduce unnecessary interactions for youth and to enforce the rights of incarcerated youth to a quality education.”

Keywords: litigation, children’s rights, Correctional Education Guidance Package, correctional education, My Brother's Keeper, task force

— **Marlene Sallo**, CRLC working group member

First-Ever Comprehensive Evaluation on Juvenile Records

The Juvenile Law Center (JLC) has released a first-ever comprehensive evaluation of state policies that govern the confidentiality and expungement of juvenile court and law enforcement records. Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records underscores the limited opportunities that exist nationally for youth when we fail to protect them from the harmful effects of their juvenile records. The scorecard measured each state's overall treatment of records based on its performance in two policy areas: (1) confidentiality of records during and after juvenile court proceedings; (2) the availability or ease of sealing or expungement.

The scorecard can be accessed on the JLC website along with a comprehensive and interactive map and the complete dataset.

Keywords: litigation, children’s rights, Juvenile Law Center, JLC, juvenile records, confidentiality, expungement

— **Marlene Sallo**, CRLC working group member