

## TRAUMA IN PRACTICE

### Communicating with Youth Who Have Experienced Trauma (Part Two)

by Talia Kraemer and Eliza Patten

Effective communication is crucial for establishing trust and building a successful attorney-client relationship.<sup>1</sup> Part one<sup>2</sup> of this article focused on the importance of relationship when working with youth who have experienced trauma. It also outlined some challenges to building healthy relationships that follow from trauma's effects on development.

This part focuses on strategies for communicating with clients who have experienced trauma.

#### Trauma-Informed Communication

Many resources are available on developmentally appropriate interviewing and counseling of children and youth. This article adds to that guidance by highlighting considerations that arise when accounting for trauma's effects.

#### Interviewing

When interviewing youth:

1. Take steps to minimize triggering the youth's trauma-related sensitivities, and
2. Use interviewing techniques that accommodate trauma's cognitive impacts, including trauma's effect on receptive and expressive language.

The principles of the trauma-informed stance (described in part one)—transparency, client control, predictability, reliability, proactive

support, and patience—can help inform your interviewing approach.

*Interview location.* Conduct interviews in a place where the client feels safe and comfortable to minimize the client's vigilance to threat. Give the client a sense of control by empowering the client to make small decisions about the interview location, such as what room to use for the meeting, where to sit in the interview room, and whether to meet with the door open or closed.

*Preparing the client.* Because youth who have experienced trauma struggle with unpredictability and transitions, tell the client about the timing, location, and intended substance of the interview ahead of time. Avoid showing up unexpectedly to meet with the client, or pulling the client out of a preferred activity. To further ease the transition, start the interview by "meeting the client where she is"—for example, talking about an activity the client was involved in right before your meeting—and then come around to the topic of the legal case gradually.

*Client control.* Give the client a greater sense of control than she may have had in other interviews (e.g., with the police or with child protective services). For example, you and your client might jointly develop an agenda before the interview with topics you would each like to address.

A general strategy for increasing the client's sense of control is to "flatten the perceived hierarchy" between the lawyer and client.<sup>3</sup> Explain that the lawyer and client each come to the case with distinct areas of expertise—for the lawyer, knowledge of the legal system; for the client,

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## CASE LAW UPDATE

### Parents Could Be Held Liable for Son's Defamatory Facebook Statements

*Boston v. Athearn*, 2014 WL 5068649 (Ga. Ct. App.)

**A youth created a false and offensive Facebook profile impersonating a peer. His parents took little action after learning of his actions, therefore they could be held liable for negligently supervising his computer use leading to defamation of peer.**

In a tort action, Alex sued a fellow seventh-grader, Dustin, and his parents for libel and intentional infliction of emotional distress after Dustin allegedly impersonated Alex by creating a Facebook profile and posting defamatory statements and pictures.

In May 2011, Dustin and another peer created a Facebook profile with Alex's name. They used a picture of Alex that Dustin had taken at school but altered with an application that made the person look overweight. He used Dustin's family's computer for these actions.

Over several days, Dustin and his friend added information to the profile, including racist content, and identified Alex as a lesbian. After a few days they added over 70 friends to the account made up of other schoolmates and some teachers. They posted comments and other material with racist, graphically sexual, and other offensive content. They also implied that Alex was mentally ill and a substance abuser.

Alex suspected that Dustin had created the page upon remembering that he took the profile picture. Her parents approached the school and Dustin and his friend admitted to creating the page and content. They were given in-school suspensions. Dustin's parents grounded him for a week.

The Facebook profile remained up for approximately a year until Facebook administrators deleted it around the time Alex's parents filed a lawsuit. In the interim, Dustin's parents did not

ask him to delete it, attempt to access it to correct or take down information, view the page, or otherwise attempt to correct the situation.

The trial court granted the defendants' summary judgment motion. Alex appealed to the Georgia Court of Appeals.

On appeal, Alex argued that the peer's parents were liable for negligently supervising their son's use of a computer.

The Georgia Court of Appeals held the trial court erred in granting the defendant's motion for summary judgment.

First, the court reviewed the procedural posture - noting that summary judgment was warranted where a party meets, or the opposing party fails to meet, the elements alleged and "there is no genuine issue as to any material fact."

The court next noted that, under Georgia law, a parent is not automatically liable for a minor's tort. However, a parent may be liable if their own negligence in supervising the child creates a known unreasonable risk of harm to others.

On appeal, Dustin's parents argued they did not know of the defamation risk posed by allowing their son to use a computer until after they were notified by the school. However, the court concluded, after they were notified, the libelous material remained on the Internet and could have been seen by new people. As such, the defamation continued after they were notified. The court concluded that a reasonable jury could find the parents were negligent in not taking further action to correct the situation. Thus, the court held that the trial court erred in granting their motion for summary judgment.

## Statute Prohibiting Counseling on Minors' Sexual Orientation Was Constitutional

*King v. State*, 2014 WL 4455009 (3rd Cir.).

**State statute prohibiting counseling efforts aimed at changing minors' sexual orientation did not violate free speech. While the statute did regulate speech, the legislature had a substantial justification based on the consensus of the medical community that the counseling could be harmful and the law was tailored to only professional speech, surviving intermediate scrutiny.**

In 2013, the New Jersey legislature passed a statute that prohibited licensed counselors from engaging in efforts to advise minor clients under age 18 regarding changing their sexual orientation (referred to as 'sexual orientation change efforts' (SOCE)). While the law did not contain specific penalties, a counselor could face licensing board action for violating the statute.

Plaintiffs, a group of individuals and organizations that provide counseling to clients seeking to reduce or eliminate same-sex attractions, brought suit against the governor and other executives in New Jersey's federal district court. They alleged the prohibition infringed on their First and Fourteenth Amendment rights to free speech and exercise of religion.

The plaintiffs asserted the counseling in question involved 'talk therapy' exclusively. This might involve exploring underlying motivations for attraction, attempting to encourage opposite sex attraction, and discussing religious content.

The district court held the statute regulated conduct, not speech, and dismissed the plaintiffs' free speech claim. The district court held that, regarding free exercise, the law generally applied and had a rational basis of protecting minors' well-being. It therefore dismissed the free exercise claim. The plaintiffs appealed.

The Court of Appeals for the Third Circuit affirmed. The Third Circuit first considered the free speech claim.

Contrary to the district court the court found the communication in the SOCE counseling did involve constitutional speech. However, since the SOCE in question involved professional licensed counseling services, the degree of constitutional protection afforded was diminished. The court concluded the appropriate standard was intermediate scrutiny. The state would need to

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By virtue of acting in a professional capacity, clients should be able to trust that their counselors are acting within recognized medical and psychological norms.

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have a substantial interest in infringing on the speech, and that intrusion would need to be appropriately tailored.

The court examined precedent around the ability of states to regulate professional practices. It noted that states have been given latitude to regulate speech in the course of delivering health care services. These limitations on speech were appropriate when they were intended to protect individuals from harm. By virtue of acting in a professional capacity, clients should be able to trust that their counselors are acting within recognized medical and psychological norms.

The court concluded that the SOCE speech was professional in nature and did not deserve full free speech protections. The statute did not prohibit counselors from discussing homosexual behaviors or change efforts publicly, rather it prohibited them from attempting to change minors' sexual orientation in private or group counseling.

Next the court examined the strength of the interest the state sought to advance. The court summarized the legislative history of the statute, noting the legislature had examined research showing a professional consensus that SOCE were ineffective and could be psychologically harmful. Further, the legislature had relied on the policy

statements of a number of reputable national medical and psychological organizations that warned of 'serious' risks of SOCE, including depression, anxiety, and self-destructive and suicidal behavior.

The court noted the interest was more substantial since it sought to protect minors, who were more vulnerable to the harms of SOCE. The court

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therefore found the state had a substantial interest it sought to advance in enacting the legislation.

Next the court examined whether the statute was sufficiently tailored to protect the interest. Plaintiffs argued that the aims of the legislation could be accomplished less intrusively by obtaining informed consent from minors before proceeding with SOCE.

The court did not find this persuasive since youth especially might feel pressured by family or community to consent despite opposing the counseling. The court concluded the statute was a permissibly tailored regulation of speech.

The plaintiffs also argued that prohibiting SOCE violated their freedom of religion. The court analyzed whether the law targeted religiously motivated conduct on its face or as applied. First, the statute made no reference to any religion, and was thus neutral on its face. Second, the court concluded the plaintiffs failed to explain how the statute, through its focus on professional counseling, sought to suppress a particular religious belief.

The court held the statute was neutral, applied generally, and triggered only rational basis review. For the same reasons the statute survived intermediate scrutiny regarding speech, the law was justified under rational basis.

**STATE CASES****Alabama**

*C.S. v. Mobile County Dep't of Human Res.*, 2014 WL 4798966 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, PRIVILEGE

Juvenile court properly admitted testimony of psychologist who evaluated mother in termination case given importance of mother's mental condition to her ability to regain custody of child. Exception to psychotherapist-patient privilege allows relevant communications offered in child custody case in which mental state of party is clearly an issue and proper resolution requires disclosure.

*Ex parte S.L.M. and R.S.M.*, 2014 WL 4667002 (Ala.). DEPENDENCY, RELATIVE PLACEMENT

Evidence did not support finding that relocating children to live with maternal grandmother and older half-sister would materially promote the best interest of the children. Children had been with custodians since birth, custodians met children's physical and financial needs, children were well loved, and grandmother and half-sister had never met children.

*Limestone County Dep't of Human Res. v. S.B.*, 2014 WL 4851345 (Ala. Civ. App.). TERMINATION OF PARENTAL RIGHTS, FIFTH AMENDMENT

Mother was entitled to have termination of parental rights trial stayed pending the outcome of a criminal prosecution the court found to be parallel because it arose from the same allegations of child abuse. Mother's Fifth Amendment rights would be threatened by her questioning during the termination of parental rights trial.

**Alaska**

*Jamie H. v. State, Dep't of Health & Soc. Servs.*, 2014 WL 5088683 (Alaska). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS

Termination of father's parental rights was in best interests of child, regardless of whether Office of Children's Services failed to identify permanent placement and despite decision by OCS not to pursue termination of mother's parental rights. Father was unfit and caused serious harm to child, placing his health and safety at risk, while mother's continued involvement could benefit the child's therapeutic plan.

*Sadie D. v. State, Dep't of Health & Soc. Servs.*, 2014 WL 4536352 (Alaska).

TERMINATION OF PARENTAL RIGHTS, ICWA

Termination of mother's parental rights was affirmed based on evidence the Office of Children's Services made active efforts to prevent the breakup of mother's Indian family, referred her for mental health and substance abuse assessments, scheduled weekly meetings, and arranged for visitation with child. Evidence also supported finding that mother's continued custody of Indian child was likely to cause him serious emotional or physical damage.

**Arkansas**

*Drake v. Ark. Dep't Human Servs.*, 2014 WL 4635566 (Ark. Ct. App.).

TERMINATION OF PARENTAL RIGHTS, FAILURE TO PROTECT

Father's parental rights were properly terminated based on the prior involuntary termination of his parental rights to other children. Mother's and father's parental rights to two older siblings were previously terminated due to danger posed by mother's mental health and father's denial of the danger. Mother failed to resolve her mental health issues, and father continued to assert that mother posed no danger to child.

*Moses v. Ark. Dep't Human Servs.*, 2014 WL 4635582 (Ark. Ct. App.).

TERMINATION OF PARENTAL RIGHTS, INCARCERATION

Evidence supported finding that it was in best interest of the children, one aged less than one year and the other less than one month, to terminate father's parental rights. Father's five-year prison sentence was a substantial period of his children's lives. He also had a history of violence, including physical abuse of the mother and a police officer, and there was no certainty that father would qualify to have custody of the children upon his release from prison.

*Villasaldo v. Ark. Dep't Human Servs.*, 2014 WL 4635631 (Ark. Ct. App.).

TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE

Evidence was sufficient to support at least one statutory ground for terminating mother's parental rights. Despite two years of services and completion of her case plan, mother displayed a lack of empathy

for child, which expert testified put child at risk of not being protected by mother. Progress toward or even completion of the case plan is not a bar to terminating parental rights.

*Warren v. Ark. Dep't Human Servs.*, 2014 WL 4635674 (Ark. Ct. App.). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES

Trial court properly terminated mother's parental rights based on finding that mother had subjected child to aggravated circumstances. Child sustained a subdural hematoma, bruising, and bite marks while in mother's custody, resulting in brain injury.

**California**

*In re Jaden E.*, 2014 WL 4670019 (Cal. Ct. App.). DEPENDENCY,

REUNIFICATION SERVICES

Reunification services provided to custodial mother when child was removed and placed with previously noncustodial father were discretionary. Juvenile court was not required to make reasonable services finding at six-month review before terminating mother's services, having found that mother lacked ability to provide safe, stable, or permanent home.

**Florida**

*A.A. v. Dep't of Children & Fam.*, 2014 WL 4435960 (Fla. Dist. Ct. App.).

DEPENDENCY, FINDINGS OF FACT

Trial court's order denying mother's motion to modify permanency order and reunification with children was issued without holding evidentiary hearing and failed to include findings of fact as required by statute. State law requires certain factors be considered and addressed in court's findings of fact.

**Georgia**

*In re C.K.S.*, 2014 WL 4958193 (Ga. Ct. App.). TERMINATION OF PARENTAL RIGHTS, SUFFICIENCY OF

EVIDENCE

Juvenile court could not terminate father's parental rights on basis that child was placed with someone willing to adopt and who, unlike the father, had bonded with the child when evidence did not support finding that father had not bonded with his child. Father had secured employment and completed case plan goals, and there was no evidence that child's relationship with father was harmful to child.

## Illinois

*In re J.B.*, 2014 WL 5088877 (Ill. App. Ct.). TERMINATION OF PARENTAL RIGHTS, INCARCERATION

Mother's due process rights were not violated when trial court found her unfit even though agency failed to provide her services while incarcerated. The court relied on events that occurred before mother's incarceration, including mother's severe physical abuse of child, evidence of prior child abuse, and second child's presence in the home when mother beat first child.

## Indiana

*In re A.S.*, 2014 WL 4722712 (Ind. Ct. App.). TERMINATION OF PARENTAL RIGHTS, ADOPTION

Termination of parents' rights was affirmed because statutory requirement of a "satisfactory plan for the care and treatment of the child" can be met by the agency's attempt to find suitable parents to adopt child and no guarantee of adoption is required. The agency need not identify a specific adoptive family because the adoption court, not the termination court, has the authority to determine whether an adoptive placement is appropriate.

## Kentucky

*Morgan v. Getter*, 2014 WL 4651151 (Ky.). CUSTODY, GUARDIAN AD LITEM

Mother's right to due process in domestic custody proceeding, in which father sought modification of custody arrangement, included right to cross-examine child's guardian ad litem regarding his evidentiary report to the court. Report recommended that child live with her father. By disallowing cross-examination, mother's protected fundamental interests in care and custody of her child could be compromised.

## Maryland

*In re Tavon T.*, 2014 WL 4976133 (Md. Ct. Spec. App.). DELINQUENCY, PROBATION CONDITIONS

In denying master's recommendation that juvenile's case be terminated, no rule or statute prohibited the juvenile court from giving a specific instruction to the circuit court judge to make mental health treatment a condition of juvenile's supervision, even though no statute or rule expressly permitted such recommendation. Court's suggestion was not reduced to judgment until after the later court hearing.

## Montana

*In re A.S.W.*, 2014 WL 4624748 (Mont.). TERMINATION OF PARENTAL RIGHTS, AGGRAVATED CIRCUMSTANCES

In termination of parental rights proceedings for mother's youngest child, trial court did not abuse its discretion by taking judicial notice of prior orders terminating mother's parental rights to her older children. The facts from the prior proceedings were not disputed, and the circumstances were similar to the current proceeding. Experts in all of the cases indicated mother could not care for children due to her permanent mental deficiencies.

## New Mexico

*In re Grace H.*, 2014 WL 4638903 (N.M.). TERMINATION OF PARENTAL RIGHTS, ABANDONMENT

Termination of father's parental rights by abandonment needed to proceed under the abuse and neglect subsection of termination statute rather than the abandonment subsection. Although father was not in contact with child during three-year period, he contacted the agency and attempted to assert his rights before the initial termination hearing, when a court-ordered plan for his treatment existed, and father was present, willing, and likely able to care for child. Agency's refusal to work with father undermined his attempt to be a part of his child's life.

## North Carolina

*State v. Harris*, 2014 WL 4548522 (N.C. Ct. App.). ABUSE, WITNESS TESTIMONY

Victim's grandmother's testimony about her reactions after hearing victim's allegations of abuse by defendant (she "got scared and shut down," "was in shock," and laid down with victim and "started crying") was relevant in criminal prosecution for misdemeanor sexual battery and contributing to the abuse or neglect of a juvenile. Testimony showed what occurred immediately after defendant's alleged assault of victim, and victim's immediate and consistent report of incident tended to bolster her credibility.

## Pennsylvania

*In re M.T.*, 2014 WL 5018590 (Pa. Super. Ct.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE  
Trial court's decision to change children's permanency goal from return to parents

with a concurrent goal of adoption to adoption only was affirmed. Children could not be safely returned to parents, who failed to demonstrate insight into safe parenting and had difficulty understanding the safety and developmental needs of the children. Foster parents were an adoptive resource and were willing to provide an ongoing relationship between the children and parents.

## Texas

*B.B. v. Texas Dep't of Fam. Protective Servs.*, 2014 WL 4737541 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE  
Evidence was sufficient to support finding that termination of father's parental rights was in best interest of children. Two of the children had special needs. Father was homeless and sporadically worked part-time. He repeatedly tested positive for drugs and had a long history of drug abuse. Father admitted to caring for children while under the influence and failed to comply with treatment.

*J.D.S. v. Texas Dep't of Fam. Protective Servs.*, 2014 WL 4745794 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, HOUSING  
Finding of endangerment to child supported termination of mother's parental rights when child lived in deplorable conditions for two years. The home was infested with roaches and mice, mother spread mouse poison in house, there was moldy food in a broken refrigerator and nothing for child to eat, and tooth decay and cavities caused child to develop a serious infection. Mother engaged in repeated criminal conduct including theft and drug use and showed poor judgment in allowing other people to live in and destroy the home.

## FEDERAL CASES

### 11th Circuit

*United States v. Mathis*, 2014 WL 4724697 (11th Cir.). CONFRONTATION CLAUSE, ELECTRONIC EVIDENCE  
In criminal prosecution for enticing minor to engage in sexual activity, defendant's right of confrontation was not violated by admission of victim's text messages at trial. Texts to defendant were not testimonial because they were not formal statements to government officers, were not made during custodial examination, and did not lead to objective belief they would be available for use at later trial.

(Cont'd from p. 209)

knowledge of her experiences and needs. In the lawyer-client relationship, the lawyer is not the authority figure; rather, the lawyer needs the client's expertise to do the lawyer's job effectively and, when representation is client-directed, to help the client accomplish her goals. De-emphasizing hierarchy creates the foundation for a more collaborative relationship, which decreases the risk of the client being triggered by the

a third party (e.g., a trusted therapist). Even in such cases, err on the side of telling the client what you know at an appropriate time, as the client might view it as a breach of trust if she later learns you withheld that knowledge from her.<sup>6</sup>

*Child's understanding.* Trauma's impact on language and attention can affect the client's understanding of the interview questions and the manner of the client's responses. Recall that youth

the client why you are seeking particular information, and how it will aid your representation. This lets the client make an informed decision about how much to disclose and maximizes transparency and client control.<sup>9</sup> For example, if you are approaching a hearing where placement will be determined, and your client has a position about where she wants to be placed, explain how knowing as much as you can about the proposed placement can help you anticipate possible barriers and build the best case to support it. In jurisdictions where you serve as a more independent guardian ad litem, representing the client's "best interests," be clear with the client that you are fulfilling your duty to do a complete investigation and make a report for the court.

Remember that it may be difficult for some youth to take advantage of your invitation to become empowered agents—due to feelings of shame about their traumas, fear of reprisal or of betraying loved ones, or an impaired sense of agency stemming from early trauma. With appropriate client consent, engage proactive support, such as other trusted adults, to help you gather information, and be patient.

*Interview recap.* At the end of an interview, re-emphasize the client's control over the information she has volunteered. Remind the client that it is up to her how you use that information, and ask if there is anything she wants you to keep confidential. Where ethical requirements take control out of the client's hands, discuss those limitations with the client regularly, before your interviews. Also ask if there is anything else the client would like to tell you or if there is anything *you forgot to ask her*. This shows you value the topics your client finds important.

**Counseling and Decision Making**  
Counseling youth similarly requires attention to how trauma can affect the way a young person processes information, focuses her attention, and

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Recall that youth may have trouble tracking interview questions if their brains are in "survival mode," and that they may pay greater attention to nonverbal than verbal cues.

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interviewing experience.

*Note taking.* Have a candid conversation with the client about note taking. Tell the client she can see your notes any time, and invite her to take her own notes if she wishes. Explain you are only writing down what she is telling you, or questions you may have, and if she doesn't want you to record a piece of information, you will follow her wishes.<sup>4</sup>

*Transparency.* Transparency should be a guiding principle in client interviews. Often, you will come to the interview with information relating to the client obtained from third parties. Be up front about what you know, while allowing the client to correct that account and provide her own version of the events. One strategy is to use a rising tone in laying out what you have been told to highlight your open-mindedness to alternate versions, while explicitly inviting the client to correct you and add her own account.<sup>5</sup>

Since young children, in particular, may be prone to suggestibility, take care in walking the line between transparency and inadvertently "feeding answers" to the client. At times, you may have sensitive information that is unknown to the client that is more appropriately disclosed through

may have trouble tracking interview questions if their brains are in "survival mode," and that they may pay greater attention to nonverbal than verbal cues. Even if the client is giving brief answers, she may not be processing the exchange. Regularly check with the client on her understanding of the issue at hand.

*Client narratives.* Help clients construct clearer narratives. If the client gives very short answers, one cause (among others) may be difficulty with expressive language. Here, the legal field can learn from recommendations developed for educators working with traumatized youth in schools. Try brainstorming with the client a list of words to describe her experiences and feelings.<sup>7</sup> To bolster the client's sequential thinking skills, help the client break down her answers to organize chronologically the events under discussion. Written or visual sequencing tools can also help, such as working with the youth to draft timelines or create "before" and "after" drawings.<sup>8</sup> Also leave more time for having these conversations, so you can patiently work with the client to understand her story as she needs to tell it.

*Information disclosure.* Respect your client's choices about how much information to share with you. Explain to

thinks through problems. To facilitate the process, begin laying groundwork early for choices the client will have to make in the future, then build on those conversations over time. This enhances predictability and helps prepare the client to make key decisions.

#### *Information retention/processing.*

Consider developing strategies to help the client process and retain information discussed during meetings. Again, draw on strategies used by educators working with traumatized youth in schools. When explaining an important or complex issue, present the information to the client in multiple formats (e.g., verbal and written).<sup>10</sup> Flow charts, role-playing, and diagrams can further enhance understanding and focus the client's attention. Write down key points and give them to the client to refer to after the counseling session, since the client might remember little after a meeting.<sup>11</sup> *Frequent repetition* of important topics will also be necessary.

*Decision making.* When the representation is client-directed, remind the client that your job is to help her achieve *her* goals. Consider brainstorming and writing down lists of available options—for example, placement alternatives—along with their likelihood of success, to help the client identify and understand her choices and ultimately voice a preference or decision. As discussed in part one, some youth who experience trauma struggle to see themselves as capable of mobilizing resources to obtain desired outcomes. To encourage the client's sense of agency, work with the client to brainstorm resources (e.g. trusted adults, school-based resources) to help her reach her goals. To cultivate decision-making skills, use tools like pro/con lists, or write down “if/then” statements to talk through likely consequences of options you might pursue in the case.<sup>12</sup>

*Creating continuity.* At the end of a counseling session, summarize your

understanding of the client's goals and the next steps you will take on her behalf, giving the client a chance for input. At the beginning of your next meeting, update the client on what you have done since the last meeting, to help build a sense of reliability and repeat important information the client may have forgotten. Also give your client a chance to raise developments she wants to discuss.

## Preparing for Court Appearances

In preparing for court, a central goal should be to maximize predictability in an inherently unpredictable process. Even if the client has been to court before, remind her about the flow of the proceedings and participants' identities and roles. Familiarize the client with the physical space by visiting the courtroom in person, reviewing photos, or drawing diagrams. If available, consider showing the client photos of key players, such as the judge or opposing counsel. If the client will be asked to participate—even to answer seemingly neutral questions from the judge—use role-playing to prepare the client ahead of time.

*Anticipating outcomes.* Try to anticipate the range of surprises and outcomes that may occur in court, and discuss these with the client. *Avoid making promises*, even about likely outcomes. Explain to your client that you will follow the plan you and your client have discussed, but it will be up to the judge to decide the outcome. Also explain how other parties involved in the case might respond to the range of outcomes that might occur.

*Client control.* Many lawyers find tensions arise when it *may be* legally advantageous to address the client's trauma history in court. First, we worry that hearing or talking about these experiences in a semi-public setting may upset the client. To the extent possible, give the client as much control as possible over whether and how to use her trauma history. Explain

that you understand it may be difficult to talk about these matters in court, but you think it might help achieve the client's goals. “*To help you in court, I'm going to have to ask you a lot of tough questions. This is so I can build a case for x, which I understand is what you want.*” To help the client make an informed decision about talking in court, know your jurisdiction's rules regarding opening proceedings to the public and under what circumstances, if any, the courtroom can be closed or a minor may address the judge in private.

*Coping mechanisms.* Additionally, your client may have adopted coping mechanisms that lead her to resist portraying herself as a “victim.” Consider identifying the client's coping skills for her and explaining the advantages of stepping outside that way of functioning for purposes of the hearing. Frame this as a way the client can control her outcomes. “*I understand that you're a strong person and that it's very important to you how tough you are in the face of what you've experienced. But, I think I can do a better job [achieving your goal] if you tell the judge about your experience and how hard that was for you.*” Be frank about the dilemma with the client, and maximize the client's choice in deciding how to use her trauma history. Note that some clients will be too invested in their adaptive behavior or will lack necessary cognitive skills to take advantage of this structure.<sup>13</sup>

## Talking about Trauma

*Addressing our own fears that limit communication.* For many lawyers, the most daunting part of communicating with clients who have experienced trauma is discussing that trauma with the client directly, when necessary for the legal case. Lawyers fear that they will severely upset or even “retraumatize” the client. It is true that we cannot do our work without causing occasional distress, but distress differs from harm. In considering the distress we cause, remember that it may be

equally or even more harmful to walk on eggshells around a client's experiences than to approach conversations about trauma with clarity and compassion.

If we wait for clients to bring up these matters when they are ready, clients may assume we do not care or simply cannot handle it—confirming their view that others are indifferent to them and their experiences or that they are “too badly damaged.”<sup>14</sup> Further, by avoiding these conversations we may actually be avoiding our own distress. Seeking support and guidance on sec-

talk about her trauma history requires consulting mental health clinicians trained to understand and interpret client functioning in ways that are usually not readily accessible to a lawyer. Ideally, each youth client who has contact with the legal system should have an assessment of her needs and strengths, and have access to appropriate, coordinated services to meet identified needs. Consult clinicians assigned to work with clients to help you:

1. understand the clients' vulnerabilities and strengths;
2. distinguish when a client may be in

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. . . because many youth are more willing to discuss their experiences with someone they trust, working to establish a strong relationship from the outset will be invaluable. . .

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ondary trauma can help us manage our own distress and communicate more effectively with clients about trauma.

#### *Strategies for discussing trauma.*

While we encourage lawyers not to shrink from conversations about trauma, it is important to develop strategies for:

1. evaluating when the client may be more or less prepared to talk about her trauma history without a high level of distress;
2. containing conversations about trauma to minimize the client's distress; and
3. when the client does become severely distressed, responding to the client and helping her return to her baseline level of functioning.

Additionally, because many youth are more willing to discuss their experiences with someone they trust, working to establish a strong relationship from the outset will be invaluable to facilitating conversations about trauma when necessary for the legal case.

### **The Importance of Assessment**

Evaluating when a client is prepared to

3. develop strategies for when and how to approach difficult subjects with the client.

Discuss these objectives with your client, and obtain appropriate consents to consult your client's providers, explicitly limiting that consent to your agreed upon objectives. Explain to your client that, by consenting for these purposes, she is not losing all confidentiality in the patient-therapist relationship.

### **Containing Conversations about Trauma**

In addition to consulting mental health clinicians, the following strategies may help minimize clients' distress from conversations about trauma.

*Client's state of mind.* First, know where your client is coming from when you meet with her. Has the client just come from a stressful event, such as a visit with a noncaregiver parent or a conflict with a peer at school? If so, consider waiting to raise sensitive issues with the client, as the client's heightened state of stress may increase the likelihood of a negative response.

*Reading the client.* When raising a difficult subject, Dr. John Sprinson recommends relying on your own ability to read the client.<sup>15</sup> If it seems the client is becoming distressed, say so, and retreat when appropriate. “*It seems like what we're talking about is upsetting you. Would you like to take a break? Would you like to stop for today?*” If your client becomes severely distressed or appears to be in a “triggered” state, the roadmap provided in part one of this article can help guide your response. Even if you don't see any visible distress, check in with the client periodically, to make it a normal part of your interactions. This lays the foundation in your relationship for the client to notify you when she is becoming distressed. Again, rely on your ability to read the client and do not push her. While we encourage actively pursuing conversations about trauma, it is equally important to respect the client's choices when it comes to talking about her experiences.

*Client debriefing.* Debrief with the client at the end of the interview. Check in on what the client thought about the interview and whether you asked anything that bothered her. If you noticed signs of distress that you did not raise during the interview, this can be a good time to check in with the client about specific things that concerned you. As always, remind the client that she is in control of her information. If you will need to revisit the subject that was distressing in the future, give the client advance notice.<sup>16</sup>

*Entry and exit strategies.* Use techniques to “contain” conversations relating to clients' trauma experiences. Devise rituals with the client to bring her “into” the conversation and then enable the client to “exit” that mental space at the end of the meeting.

One example used by mental health professionals is a “container exercise.”<sup>17</sup> In one version of the exercise, after discussing trauma, you allow 10 minutes to close your meeting with the client. Have the client close

her eyes if she is comfortable, and imagine a container. Encourage her to use any materials she likes, and to decorate and design it as she sees fit. Ask her to pay attention to details such as size, color, and texture. Suggest that she visualize holding the container in her hands, and moving it around to inspect it on all sides. Then ask her to open the container and imagine wrapping her memories, feelings, and experiences she has just shared in a wrapping of her choice, and placing this package inside the container. Finally, ask her to close the container and seal/lock it and place it on a shelf where she can come back to it at a later time.

This exercise activates other brain functions, apart from the emotions that your conversations have been tapping into, and teaches important emotional regulation skills. It also highlights the difference between containment—talking about difficult emotional experiences when it is safe and putting those feelings away when it is not safe—from stuffing—simply avoiding or denying the emotions altogether.

You may feel some discomfort conducting this kind of exercise, feeling it is outside the scope of your legal training or expertise. Nonetheless, our jobs compel us to talk about trauma with clients, and we have a duty to do so thoughtfully and to minimize distress where we can. While some lawyers are fortunate to work on multidisciplinary teams with mental health professionals who can help facilitate conversations about trauma (for example, in lawyer-social worker partnerships), many do not have such resources available in their practices. Where necessary, we encourage lawyers to seek appropriate training to build the experience and comfort they need to pursue conversations about trauma in ways that support and cause minimal distress for the client.

*Legal time constraints.* The time constraints inherent in most legal cases will complicate your ability to follow the above recommendations. It is common for lawyers to need information

about the client's trauma history for an impending court hearing, but when meeting with the client, the client becomes overly distressed or resists talking. At this point, it would be best to back off and revisit the subject later, but the court hearing is looming and your schedule is packed. To avoid this scenario, build in enough time for multiple meetings with clients to address trauma and related topics. This will be even more important early on when just starting to build rapport with the client, as a trusting relationship may help the youth feel more comfortable discussing her trauma history.

## Conclusion

Being an effective lawyer for a youth who has experienced trauma requires you to adapt how you undertake even the most basic tasks of the attorney-client relationship. Research shows the cognitive, developmental, and psychosocial impacts of trauma can affect how the youth perceives and interacts with you and her ability to engage with and participate in her legal case. These understandings create a duty to respond by adopting a trauma-informed approach in the representation. This imperative goes beyond the ethical duties to be zealous and effective advocates: it values the fact that every positive relationship with a youth who has experienced trauma can be restorative, helping the youth change negative beliefs about herself, her relationships, and her possibilities.

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*Talia Kraemer*, JD, was a fellow (2012-2013) at Legal Services for Children, San Francisco, CA.

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## Endnotes

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15. Dr. John Sprinson, Training at Legal Services for Children, Feb. 22, 2013 (on file with authors) ("Sprinson Training 2/22/13").
16. Sprinson Training 2/8/13; Sprinson Training 2/22/13.
17. This is an exercise used by Gena Castro-Rodriguez, adapted from Francine Shapiro's EMDR work.

## Congress Passes New Federal Child Welfare Law: Tips for Advocates

by Howard Davidson

On September 29, 2014 President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980). The Act is now Public Law 113-183.

The PST-SFA (Act) has two key titles related to the child welfare system:

- Title I on identifying and protecting those in the system who are at risk of sex trafficking. Title I also contains many important provisions related to children in foster care, including elements that should influence legal advocates and courts in better addressing the needs of such children.
- Title II is called “improving adoption incentives and extending family connection grants.”

Because of their larger significance, the foster child-related provisions are highlighted first before analysis of the anti-trafficking provisions.

### New tools for legal advocates to help foster children

#### Acting promptly when children go missing

Foster youth who go “missing” from care should now be promptly reported by the child welfare agency to law enforcement for immediate entry into the FBI missing children’s database, and also reported to the National Center for Missing and Exploited Children. Agencies must further determine:

- why the child left care,
- address those factors related to the child leaving care,
- quickly work on locating the child, and
- determine what happened to the child during their absence from care.

Although the law delays when agencies must have protocols in place to do these things, it is difficult to see

why such practices shouldn’t begin immediately, if they’re not already being done. Lawyers and judges, who learn a child in care has gone missing, should assure these steps are taken quickly.

#### Promoting foster child “normalcy”

Foster and kinship care providers will have to be specially prepared by the agency to have knowledge and

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Every child in care, age 14 and older, gains new legal rights under this Act . . .

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skill to treat a child according to the Act’s “reasonable and prudent parent standard.” This new standard ensures foster children participate in age or developmentally-appropriate events, promoting their engagement in “social, extracurricular, enrichment, cultural, and social activities.” Examples listed in the Act are: sports, field trips, and overnight activities.

The Act describes efforts to promote foster child “normalcy,” including signing permission slips and transportation to such activities. States will have to develop standards for foster homes, and (by designating an official within) group care facilities, to facilitate this “reasonable and prudent parent” child normalcy standard.

The Act also requires liability protections for those carrying out the Act’s normalcy practices. During case reviews, lawyers and judges should examine what “normalcy” steps have been taken and encourage the agency and care provider to help the child participate in these activities. The Act

requires such an inquiry at every permanency hearing.

#### Stopping APPLA as a permanency option for youth under 16 and documenting its need for those 16 and over

The use of the permanency goal “another planned permanent living arrangement” (or, as some states call it, independent living, emancipation, or long-term foster care that youth simply age out of) is now prohibited for any child under age 16. Tribes have three years to implement this provision. If a current case is being heard on a child under 16, and APPLA appears to be the case goal (rather than return home, adoption, permanent legal guardianship, or long-term relative placement), the agency should be reminded of this new federal provision. Congress believes such children should not be deprived of those other, family-focused, permanency goals.

The Act also mandates for every “permanency hearing” that the agency document on the record “intensive, ongoing, unsuccessful efforts for family placement.” During review of an APPLA plan, the child now must be asked about their desired permanency outcome. If APPLA is to remain the goal, in every case there must be a “judicial determination” at that hearing of compelling reasons why APPLA remains the best permanency plan for that child.

#### Empowering transitioning foster youth at the earlier age of 14

Every child in care, age 14 and older, gains new legal rights under this Act, rights that 15 year olds (and even some older foster youth) may not have had. The child may now select up to two individuals (excluding those normally on their case planning team, their foster parent, or their case-

worker) to be involved in developing the case plan. The child's attorney or GAL could be one of those selectees. Agencies can reject selections only if the person wouldn't be acting in the child's best interests. The Act says one of these selections can be designated the child's "chief advisor" entrusted under the Act to help apply the normalcy standards addressed earlier. Additionally, instead of only requiring youth 16 and over to be actively involved in their case planning (as in earlier federal law), the Act has lowered that age to 14.

To help guide foster youth toward "successful adulthood" (the Act here replaces "independent living" with this term) federal law now requires the case plan for all those 14 and over to include a "rights document" that specifically addresses their rights to "education, health, visitation, and court participation." Lawyers and judges should be sure the child has seen this rights document, had it explained to them in an age-appropriate way, signed it, received a copy of it, and demonstrated that he or she understands it. Legal advocates for children may want to work with the agency to draft a new rights document to use in their state to comply with the Act.

### **Receiving key documents upon leaving foster care at age 18 or later**

Except when a youth was only in care for under six months, the Act says no young adult should leave care without:

- an official or certified birth certificate,
- a Social Security card,
- health insurance information (likely including the Medicaid benefit extension through age 26 under the Affordable Care Act),
- a copy of their medical records, and
- either their driver's license or a state-issued official identification card.

At court hearings related to a youth's exit from the system, there of

course should be an inquiry on whether they have received these items.

### **Requiring new state AFCARS data to understand use of congregate care and identify pregnant/parenting children in foster care**

Children not placed with families, but rather in group care and institutions, were a concern addressed in this Act. Beginning in federal FY2016 states will have to report numbers of children in such facilities, their ages, how many of them have APPLA plans, placement duration, numbers in each type of placement, clinically diagnosed special needs of such children, and those receiving specialized education, treatment, counseling, or other services. A separate new AFCARS data element is mandatory state reporting on children in foster care who are pregnant or parenting.

### **Encouraging sibling placements**

The Fostering Connections Act requires prompt notification of relatives whenever a child enters foster care. The new Act adds to the list of those who must be notified of a child's placement "all parents of a sibling of a child, where such parent has legal custody of such sibling." The relative notification provision is also amended to, for the first time, broadly define the term "sibling." There is also, in this section, a "Rule of Construction" that may prove to have legal significance: "Nothing...shall be construed as subordinating the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child."

### **Mandating HHS to submit a Report to Congress addressing permanent adult connections for children in foster care**

Although not a requirement for states, it is significant that the Act requires HHS to report in two years on state sex trafficking initiatives as well as on children who go missing from care. Moreover, that Report must include

information on a topic that lawyers and judges should always be conscious of: the need for every foster child to have and maintain "long-lasting connections to caring adults, even when [they] must move to another foster family home or [be placed under] supervision of a new caseworker." An essential role of legal and judicial advocacy is to help assure at least one adult is consistently involved to provide support during the child's involvement in and transition from the child welfare system.

### **Assuring child welfare agencies address sex trafficking Developing child welfare policies, procedures, and training on sex trafficking**

The law adds a new state plan requirement. The child welfare agency must develop, with other agencies, steps (including training) to determine if a child in the care or supervision of the agency is, or is at risk of, being sex trafficked. The agency has the option of gathering information on child sex trafficking for those, up to age 26, who once were in foster care. Lawyers and judges should start working with their child welfare agency to implement this provision.

Most states do not have laws or child welfare agency policies addressing the legal responsibility of the child welfare agency to identify and serve children who have been sex trafficked, unless the "perpetrator" or the facilitator of their trafficking was a parent or legal guardian (thus making it an intrafamilial child maltreatment case). Questions about a child's involvement in commercial sexual activity may never have been asked at case intake, and reports that a child has been sex trafficked may currently be screened out. Congress wants child welfare agencies to take responsibility in aiding these unique victims, but to do so effectively may take significant changes in state law, policy, and practice.

### **Reporting children in agency care as sex trafficking victims**

States must now develop procedures

to help assure immediate reporting of such victims to law enforcement agencies. Two years from now, every state will be required to report to HHS the number of those who became victims; this includes reporting in their AF-CARS data the number of children annually who were victims before they entered foster care, as well as while they were in foster care.

### State incentives to increase adoptions of older foster youth and permanent legal guardianships

#### Enhancing the HHS financial incentive (bonus) program for states that increase adoptions of older youth as well as permanent legal guardianships

The Act creates a three-tiered system to provide states financial bonus awards for increasing adoptions (and, for the first time, also permanent legal guardianships):

- the foster child permanency rate generally;
- the preadolescent permanency rate; and
- the older child (14 and over) rate (which grants the highest per-child award).

States might also get a larger bonus based on their increased rate of “timely” adoptions of foster children.

#### Promoting legal permanency through other reforms

These incentive payments must now be used by states to supplement their other funds, so the money should be used to support new services. States will be able to use the funds for up to three years. Another provision of the Act allows states to continue federally subsidized kinship guardianship payments if a guardian dies, or becomes disabled, and is then succeeded by another guardian.

#### Mandating that state savings in phasing out the old AFDC eligibility rules for Title IV-E federal foster care support be reinvested

A portion of these state savings must now be spent on post-adoption and post-guardianship services, thus adding to the array of services that might help avoid adoption and guardianship disruption/dissolution. To learn more about such disruption/dissolution, HHS will be required to issue regulations instructing states to collect data on foster care re-entries from legal permanency.

Although several of the Act’s provisions permit delays in implementing these reforms, planning at the state level should start immediately. Lawyers and judges should be an important part of this planning.

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*Howard Davidson, JD, is the director of the ABA Center on Children and the Law, Washington, DC.*

## New Federal Law Strengthens Access to Job Skills for Foster Youth

**Y**outh who are in or have left foster care now have new federal priority for job training services. The Workforce Innovation and Opportunity Act (WIOA), P.L. 113-128, was enacted on July 22, 2014 and takes effect on July 1, 2015.

This law helps job seekers and workers access employment, education, training, and support services to succeed in the labor market. It matches employers with skilled workers needed to compete in the global economy. Congress passed WIOA, the first legislative reform of the public workforce system in more than 15 years, by a wide bipartisan majority. The Act affects how states conduct their federally funded Workforce Development Programs.

The WIOA expands youth employment program services for

out-of-school youth. Local areas must increase the percentage of youth formula funds used to serve out-of-school youth to 75 percent from 30 percent under current law. The Act also removes service income eligibility requirements for most out-of-school youth and raises the eligible age for such youth to include the 16 through 24 age group.

The Act also places a new priority on work-based learning by providing that at least 20 percent of local youth formula funds be used for work experiences such as summer jobs, pre-apprenticeship training, on-the-job training and internships that include academic and occupational education. The Act also links services to the attainment of secondary school diplomas, entry into postsecondary education and career readiness, and to the

attainment of postsecondary credentials aligned with in-demand industry sectors or occupations. Additional allowable activities include financial literacy education and entrepreneurial skills training.

These changes in federal job training legislation should also provide more opportunities for current and former youth in foster care to participate in the Department of Labor’s YouthBuild program. It provides significant academic and job skills training and leadership development to youth ages 16-24. YouthBuild serves approximately 7,000 youth annually. Its programs offer innovative education programs that provide individual instruction leading to a GED or high school diploma.

—Howard Davidson, JD

## How to Ensure Educational Success for Dependent Youth in Congregate Care

by the Legal Center for Foster Care and Education

### **Q&A How many children live in congregate care settings?**

Roughly 58,000 children in the United States live in residential placements such as group homes and treatment facilities.<sup>1</sup> Many youth are placed through the child welfare or mental health systems; others are placed directly by their families.

### **Q&A What barriers to educational success face youth in residential placements?**

Youth placed in group homes, mental health facilities, or other residential settings often face daunting educational challenges. It is hard for the child to stay in the same school if the facility is located far from the child's home school. If youth must change schools, often student records are not transferred promptly or the youth does not receive credit for all coursework completed while in the facility (particularly if they attended an on-grounds school). On-grounds schools may not be subject to the same standards and requirements as regular public schools

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Youth placed in group homes, mental health facilities, or other residential settings often face daunting educational challenges.

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and often have limited curricular and extracurricular offerings.<sup>2</sup>

Finally, youth in congregate care are more likely to lack a legally authorized adult to make special and general education decisions on their behalf and ensure their needs are addressed. These youth are less likely to have a parent, foster parent, or kinship provider to check on academic progress, ensure special education needs are met, or participate in school

discipline proceedings—making them more likely to fall through the cracks.

### **Q&A Can youth stay in the same school they were attending when they are placed in congregate care? Can they promptly enroll if a school change is needed?**

The federal Fostering Connections to Success and Increasing Adoptions Act directs child welfare agencies to work with local school districts to ensure children in the agency's care—which includes many children in congregate care—remain in the same school even if they, initially or at a later time, move to another school district or attendance area.<sup>3</sup> Depending on the state's definition of "awaiting foster care placement," children in congregate care may also be considered "homeless" under the federal McKinney Vento Homeless Assistance Act, 42 U.S.C. § 1143, which also guarantees "school stability."

Factors to be considered in making the best interests determination under both laws could include the

distance of the congregate care facility from the prior school (but not the cost of transportation there) and the youth's therapeutic needs and permanency goals. If it is not in the youth's best interests to remain in the same school, he/she should be immediately enrolled in the new school. Under McKinney-Vento, this is the case even if the child does not have required enrollment documents.

### **Q&A Why should a youth at a facility with an on-grounds school attend school in the community?**

In some circumstances, it is not in the child's best interest to attend the public school in the community. However, for many children living in congregate care settings, a school in the community is the most appropriate education setting. Many states specifically permit this.<sup>4</sup>

Attending the local school reduces stigma, gives the youth access to a full range of educational opportunities, and is often the least restrictive environment for a youth with special education needs. Public schools are also more likely to have aligned curricula and to recognize credits from other public schools. This allows for smoother school transitions for these highly mobile youth.

### **Q&A What can caseworkers do to ensure these youth succeed in school, stay on track to graduate, and transition seamlessly back to school in the community?**

To promote school stability, caseworkers should locate a placement close to the youth's current school and in the most family-like setting possible. Caseworkers should ensure the case plan includes complete and up-to-date education records.

Caseworkers should also work with the school or the juvenile court to make sure there is a parent or other legally authorized person to make general and special education decisions for the child. Remember, caseworkers are not permitted to sign IEPs or make other special education decisions. With

the authorized person, caseworkers should ensure the child is educated in a regular public school with nondisabled peers to the maximum extent appropriate.

To make sure the youth transitions smoothly to the next school when leaving congregate care, caseworkers should ensure the child re-enrolls

child well) to serve in that role.

Judges and attorneys must ensure the youth stays in the same school when moving, unless his/her best interests dictate a school change. Judges should clarify in court orders whether the youth may attend a local public school (or other appropriate school) even though placed in a facility with

by the district in which the nonpublic school is located and offer college preparatory courses, career and vocational training, and extracurricular activities.<sup>8</sup> Residential placements may not condition acceptance to the facility on the child's attending an on-grounds nonpublic school.<sup>9</sup>

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Judges, child and parent attorneys, CASAs and others in the courtroom should review the youth's general and special education needs and progress at all hearings. . .

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promptly in the next school and the youth receives credit for work done while in congregate care by gathering transcripts, checking their accuracy, and working with the youth's previous and current school districts.

Fostering Connections requires the child welfare agency to develop a detailed transition plan, personalized at the youth's direction, at least 90 days before a youth exits care at age 18 or older, depending on the state.<sup>5</sup> Caseworkers should make sure it includes a graduation plan and comprehensive postsecondary goals. For youth receiving special education services, this transition plan should be coordinated with the transition plan required under the Individuals with Disabilities Education Act starting at age 16 (or earlier in some states).<sup>6</sup>

### **Q&A** What can judges and others in the courtroom do to promote school success for youth in congregate care?

Judges, child and parent attorneys, CASAs and others in the courtroom should review the youth's general and special education needs and progress at all hearings and ensure the youth has an engaged adult legally authorized to make education decisions. If the child does not have an education decision maker, and state law or court rules permit, judges should appoint someone (ideally, who knows the

an on-grounds school.

Judges should check whether the youth received full credit for work done and is making progress toward a timely graduation. At times, the judge should direct the caseworker to identify remedial services or credit recovery programs to help the youth regain lost ground.

If the youth is approaching discharge, the judge should review the child's transition plan to ensure it includes meaningful, specific postsecondary goals.

### **Q&A** How can systems work together to improve education outcomes?

Systems should work together at the local and state level. For example, in Pennsylvania, some school districts and residential facilities have developed protocols to ensure prompt enrollment and appropriate placement of students. In Illinois, a statewide surrogate parent program focuses exclusively on providing surrogate parents for youth in residential care. That program maintains a list of residential facilities across the state, and each facility is encouraged to contact the program to obtain surrogate parents. By law, California mandates that students receive full credit for coursework completed at nonpublic schools.<sup>7</sup>

Also, on-grounds nonpublic schools must give students access to the same instructional materials used

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The *Legal Center for Foster Care and Education* serves as a national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children in the foster care system. Visit [www.fostercareandeducation.org](http://www.fostercareandeducation.org) for more information.

### **Endnotes**

1. [www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf](http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf)
2. See, e.g., [http://stoneleighfoundation.org/sites/default/files/Moving%20the%20Dial%20Styer%20Final\\_0.pdf](http://stoneleighfoundation.org/sites/default/files/Moving%20the%20Dial%20Styer%20Final_0.pdf)
3. 42 U.S.C. § 675(1)(G)(ii)(I)
4. See, e.g., 42 Pa.C.S. § 13-1306 (Pennsylvania); Cal. Educ. Code § 48853 (California); N.H. Rev. Stat. § 193:28, 193:12(III) (New Hampshire); S.C. Code Ann. § 59-63-31(A)(1)(b) (South Carolina).
5. 42 U.S.C. § 675(5)(H)
6. 34 C.F.R. § 300.320(b)
7. Cal. Educ. Code § 48645.5
8. Cal. Educ. Code § 56366.10
9. Cal. Educ. Code § 56366.9

### **Save the Dates**

**July 24-25, 2015:**

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on Children and the Law

**July 22-23, 2015:**

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Attorney Conference

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## Guidance for Parents Thinking about Adopting Older Children

The authors of the new book, *Adopting Older Children: A Practical Guide to Adopting and Parenting Children over Age Four* (New Horizon Press), hope to help guide parents through the process of adopting an older child. The book's coauthors are:

- Stephanie Bosco-Ruggiero, a communications and research assistant at the National Center for Social Work Trauma Education and Workforce Development and a doctoral student at Fordham University Graduate School of Social Service;
- Gloria Russo-Wassell, a national certified counselor and doctoral candidate in educational development psychology at Cornell University and a Licensed Mental Health Counselor (LMHC) in New York;
- Victor Groza, the Grace F. Brody Professor of Parent-Child Studies at Case Western Reserve University's Jack, Joseph and Morton Mandel School of Applied Social Sciences.

The three adoption and child development experts pooled their vast knowledge on adoptions, child welfare, and clinical practices in writing this guide to help parents answer the question: Are we ready to take this journey and adopt?

They provide a realistic outlook about considerations in adopting or having already adopted an older child. They also dispel many misconceptions people have about bringing an older child into the family.

What does it mean for the child to find a home? According to Russo-Wassell, a better future, with hope and promise of reaching life goals.

According to the Office of the Administration for Children and Families, the 26,000 teens aging out of foster care without a permanent home are

more likely than adopted children to end up in the criminal justice system, lack opportunities to go to college, or become young parents.

Bosco-Ruggiero, through her research and interviews, has seen the incredible resilience and hopeful nature of so many older children waiting to be adopted.

"I want the public to know how many wonderful kids are waiting for a family to love them," said Bosco-Ruggiero, an adoptive parent herself.

"The book is realistic but not sensationalistic—that tells the good, the not-so-good and the cautions of adopting an older child," said Groza. "To be prepared is to be forewarned and forearmed if case issues arrive. We see that families struggle when they are not adequately prepared for the adoptive experience with an older child."

The guide, in time for November's National Adoption Month, was inspired by the large numbers of children yearning to be part of a permanent family and the need to correct misconceptions that prospective parents often have about adopting children about age four and older.

Contrary to misconceptions about older children:

- Not all older children available for adoption have special needs or are juvenile delinquents.
- Many older children, available for domestic and international adoptions, are not unruly children with behavior problems, but are in foster care due to neglect or abandonment that is driven by the parent's inability to raise them because of poverty or health conditions.
- Parents of older adopted children feel fulfilled as parents, but differently than parents adopting a baby.

While parents of older adopted children miss out on the early developmental milestones in infancy,



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Groza points out a number of advantages—beyond missed diaper changes and late-night feedings—such as the capacity for better communication and indications of what the child wants or doesn't want.

Older children can also use words and gestures to communicate. Whereas with babies, it can be a guessing game, he said.

Another advantage of adopting an older child, particularly from the public foster care system, more information about the family history exists in the domestic records. For intercountry adoptions that may not be true of older children, Groza explained.

For older people wanting to be parents, adopting an older child might be the only way to make it happen, he said, because of less age restrictions. For example, a couple with a mother of 45 and father, 60, they might consider the mother's age in the adoption process.

He said few adoption agencies would want a 60 year old raising an infant or a 70 year old having enough stamina to run after a 10-year-old child.

Also, the Hague Convention on Intercountry Adoption has encouraged limiting foreign adoptions to older children or young children with special needs.

When it comes to the final adoption decision, the authors report adoptions are made in what's best for the child, not the preferences of the adoptive families.

## ABA Supports Pro Bono Legal Assistance for Unaccompanied Children

**A**BA President William C. Hubbard expressed the association's support October 20 for collaborating with the Obama administration and other stakeholders to enhance access to legal representation for unaccompanied children in the immigration court system nationwide.

In a letter to Vice President Joseph R. Biden Jr., who has assumed a leadership role on the issue, Hubbard noted the work that is already being done in this area by the ABA and other organizations, including the establishment of the ABA Working Group on Unaccompanied Minor Immigrants. The working group—a cross-section of lawyers from several ABA entities—will recruit, train and mentor additional attorneys to increase the capacity of existing legal services programs and complement their efforts.

“We want to emphasize, however, that pro bono representation cannot provide a complete solution to this problem,” Hubbard clarified. He pointed out that because of the large number of children lacking counsel, as well as many other competing civil justice pro bono needs, the demand for pro bono services for these children outweighs the available resources. Addressing the situation, he said, will require additional resources and initiatives from the federal government as well as the nonprofit and private sectors.

Recommended steps, he said, should include:

- prioritizing access to counsel and legal services for detained and non-detained children;
- facilitating pro bono efforts by allowing adequate time for children to obtain counsel and for counsel

to prepare cases; and

- ensuring adequate funding for the immigration courts and the U.S. Citizenship and Immigration Services Asylum Office.

“The ABA fully agrees with you that the rapid increase in unaccompanied children entering our country presents extremely difficult challenges. However, we cannot be in such a rush to address this crisis that we abandon the principles of fairness and due process that are the hallmark of our justice system,” Hubbard said.

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For ABA work on immigration and child welfare issues, visit [www.americanbar.org/groups/child\\_law/what\\_we\\_do/projects/immigration.html](http://www.americanbar.org/groups/child_law/what_we_do/projects/immigration.html)



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