

TESTIMONY

The Council of the City of New York
Committee on General Welfare
Bill de Blasio, Chair
Committee on Youth Services
Lewis A. Fidler, Chair

“Examining DYCD’s and ACS’ Efforts to Prevent Youth Aging out of Foster Care
from Becoming Homeless”

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Good afternoon. I am Nancy Rosenbloom, Director of the Special Litigation and Law Reform Unit of the Legal Aid Society's Juvenile Rights Practice. With me is Heather O'Hayre, Social Worker with our Adolescent Practice Team in Manhattan. We submit this testimony on behalf of the Legal Aid Society, and thank the Committees on General Welfare and Youth Services for inviting us to share our thoughts on how our City treats older children in foster care as they prepare to live on their own, and in particular on what can be done to prevent so many young people from becoming homeless after being in foster care. We applaud the Council for tackling this important subject, and look forward to the valuable contributions that we are sure the Committees will make in this area of vital concern to our City's children and their families.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive legal representation to children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented some 29,000 children, almost 90% in the context of child protective proceedings. Approximately 40% of our clients are aged 12 and over. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, and State and City agencies. In addition to representing many thousands of individual children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Who Are the Young People "Aging Out" of Care?

The foster care population nationwide and in New York City has shifted dramatically in recent years. Currently, half the young people in foster care with ACS and its contract agencies

are aged 12 and older¹. According to ACS' published data, between 60 and 100 young people each month are discharged to independent living, meaning they are never adopted and never discharged from care to live with their families². Instead, they may remain in care until age 21, when they "age out" and are no longer entitled to ACS' services or the protection of the Family Court. Young people leaving foster care to live independently face much greater challenges than non-foster-children; the latter most often reach adulthood with the assistance and support of family and community. All too often, in addition to the trauma of being removed from family members and placed in foster care, young people preparing to leave care have also been moved from setting to setting and community to community while in care, making it difficult to maintain lasting ties with supportive adults. They need the basic things that children who live in stable families need when they grow up, but face more obstacles to meeting those needs.

In our experience, because ACS and the other responsible agencies in our City have not fulfilled their obligations in many instances, it is far from certain that young people aging out of foster care will do so with a place to live, a job and/or ongoing education, income security, and health insurance. Today we focus on the problem of homelessness, which is experienced by young people aging out of foster care without a family to return to, but which also befalls far too many young people who have left foster care with a variety of plans for permanency. Legal Aid's Homeless Rights Project provides legal assistance to homeless families and individuals. In that project, we represent many people – now adults – who were in foster care as children. We see firsthand what was documented in a recent study by the Tier II Coalition – a group of 38 not-for-profit family shelter providers who work under contract with New York City. *There is something very wrong with how our City treats its young people when 13.9% of families in*

¹ ACS' last published figure is 49.5%. http://www.nyc.gov/html/acs/downloads/pdf/outcomes/out6_citywide.pdf.

² ACS website, http://www.nyc.gov/html/acs/downloads/pdf/stats_monthly_update.pdf

family shelters are headed by parents who had been in foster care, and 2.4% of those parents “entered the shelter system directly from foster care” to DHS shelters³.

ACS is Legally Obligated to Prepare Children for Independent Living and Ensure that They Leave Care with Safe and Stable Permanent Housing

The law is clear that ACS cannot discharge a child from foster care to homelessness,⁴ yet because the permanent housing options for these young people are so limited and so poorly utilized, New York City’s Department of Homeless Services sees many former foster children applying for shelter⁵.

New York’s Social Services Law, Family Court Act, and State regulations absolutely require that young people whose goal is independent living be provided with assistance with permanent housing, employment, education, health care, and public assistance if needed⁶. These rights are to be ensured by ACS and the foster care agencies with which ACS contracts. *The law plainly prohibits ACS and foster care agencies from discharging young people from foster care to homeless shelters for adults or families, or to single-room occupancy hotels.* State regulation includes this bar and also directs that *“No child may be discharged to another planned living arrangement with a permanency resource, unless . . . there is a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge.”⁷* In other words, it is illegal to discharge a young person to a single men’s or women’s shelter, to a homeless youth shelter, or to the Department of Homeless Services’ emergency housing intake

³ “Characteristics of Homeless Families in the New York City Tier II Shelter System,” A Study by the Tier II Coalition Research and Evaluation Committee at p. 6 (based on data collected in Spring 2000).

⁴ 18 N.Y.C.R.R. § 430.12(f)(3)(i)(c); *Palmer v. Cuomo*, 121 A.D.2d 194 (1st Dep’t 1986); SSL 409-a(5)(c).

⁵ The numbers in New York City are echoed nationally: Twenty to 36% of homeless people have been in foster care as compared to only 2% of the overall population. National Resource Center for Youth Development, *Improving Outcomes for Older Youth: What Judges and Attorneys Need to Know* (2004).
www.nrcys.ou.edu/nrcyd/publications/pdfs/improveoutcomes.pdf

⁶ *See, e.g.*, SSL §§ 366, 398, 409-a; Educ. Law §3203; Family Court Act §§ 255, 1055; 18 N.Y.C.R.R. §§ 427.3, 430, 441.

⁷ 18 N.Y.C.R.R. 430.12(f)(3)(i)(c).

office (the PATH office). While we no longer see as we once did discharge plans that say “discharge to Emergency Assistance Unit,” such discharges continue to occur, yet the paperwork now reflects them in the vague category of “discharge to another planned living arrangement with a permanency resource,” (the new name for “independent living”).

Youth in Foster Care are Unable to Access the Few Available Permanent Housing Options

Although Commissioner Mattingly and his high-level staff have the best of intentions and plans for reforming ACS in the long term, on the ground level each day, we find that the agency is failing in its duty to the older children in its care.

There are few permanent housing options available for adolescents leaving foster care to live independently. Not all are realistic options, and young people are often not told about them in time to actually find apartments. For example, as required by the Social Services Law, ACS operates a housing subsidy program that is available to 18-year-olds leaving foster care who will have sufficient income with the small subsidy of up to \$300 per month to afford an apartment on the open market. Given the extremely low vacancy rate in low-income housing in NYC, this subsidy is insufficient to meet housing needs, and so it is nearly impossible for our clients to take advantage of this opportunity. The \$300 amount was set by State law in the 1980’s and has not increased. The State should increase the monthly amount, but the City could also fund its own monthly subsidy, as it has done for selected other populations, to make this a realistic option for young adults leaving foster care. We urge the City to do so. Even when young people are able to use the ACS subsidy, however, it has taken ACS’ fiscal unit between 8 and 12 weeks to issue our clients the checks required to secure their apartments, and another 8 to 12 weeks to issue furniture grants once our clients present them with a secured lease. This delay has caused young

people to lose apartments because landlords cannot wait, and results in new tenants moving into housing without beds, tables or chairs for the 2-3 months they must wait for furniture allowances. ACS has recently promised to shorten this time frame by having agencies issue checks and be reimbursed, but our clients have yet to see this new procedure work.

Another option is the local priority for aging-out youth for New York City Housing Authority (NYCHA) public housing and Section 8 leased housing vouchers (also administered by NYCHA). ACS and NYCHA have made the process for accessing these options so onerous, however, that many young people who could benefit have been deprived of the chance. ACS must first give formal permission for a young person to apply for this housing, and then ACS forwards the application to NYCHA. Yet ACS has neither required foster care agencies to ensure that these applications are completed by a certain date, nor has the agency set a protocol governing how the applications get to ACS. These applications must be filled out on or shortly after our clients' 18th birthdays to ensure that they are complete and that there is time to process them once the young people are prepared to be trial discharged to their own apartment (or on the 20th birthday, whichever comes first). Moreover, contract foster care agency workers are required to complete a section of the application before ACS processes it. With high turnover in workers at all of the agencies, our clients' applications are frequently not completed and are often lost. Many clients have had to fill out applications two to three times before they are sent to NYCHA for consideration. ACS and NYCHA have not successfully coordinated their efforts either, causing delays and improper denials of permanent housing to this vulnerable population.

There are a number of ways in which ACS and agencies' practices themselves present obstacles for young people seeking to access permanent housing, and these practices must change immediately. For example, ACS approves discharges of young people from foster care

to college dormitories. By definition, dorms are not permanent housing, and young people will have nowhere to live after college, between semesters, and during summer. Additionally, ACS will not refer to NYCHA youth whose foster parents say they can live in the household after their 21st birthday, even if this is a very temporary situation designed to keep the youth from becoming homeless. For NYCHA-administered public housing and Section 8 rental assistance, proof of income is required. When young people are going to need public assistance after leaving foster care (but must apply for housing *before* they exit foster care), ACS must coordinate with HRA to arrange for presumptive eligibility documentation, so that income can be proved in time for applications to be processed. One of the most egregious failures is ACS' not coordinating with the State Office of Mental Health (OMH) and the State Office of Mental Retardation and Developmental Disabilities (OMRDD) so that young people with disabilities who need supportive housing can access it. Time and again, we have seen agencies who should be working together to help young people instead seek to dump "difficult cases" on each other.

Teens are Improperly Denied Foster Care Placements and Sent to Temporary Shelter

Adolescents in foster care are placed in inappropriate settings far more often than younger children. ACS has made great efforts to reduce the number of group homes and this was a step in the right direction. At the same time, however, there are far too few successful alternatives. Tragically, when teenagers in care do not succeed in one foster care setting, ACS sometimes fails to find an appropriate placement and instead refers them to temporary shelter. We have also seen ACS and contract agencies discharging young people deemed "uncooperative," from foster care to homeless shelters. When teens are unlawfully pushed out of foster care in this way, they lose the entitlement to services and supports that come with being in foster care, and they also lose the benefit of court oversight of their placements.

- Recently, a Legal Aid client who was moved out of his group home was sent to ACS' Children's Center for a new foster care placement. ACS did not find him a lawful placement but instead sent him twice to the Covenant House shelter, which is not a foster care placement. His Legal Aid attorney had to file an emergency motion in Family Court to force ACS and the foster care agency to get her client a foster care placement in a Supervised Independent Living apartment.

- At another group foster care residence, specifically designated a "therapeutic residence," several of our teenaged clients have been sent to Covenant House's shelter for "respite." Others have been threatened with being sent to Covenant House as punishment for poor behavior.

Needless to say, it is the duty of a foster care agency to provide any needed counseling or therapy to young people in its care; it is not permissible to push them out of foster care into a temporary shelter. Yet Covenant House stated publicly at a forum last month that 38% of the young people in their shelter came from foster care.

Conclusion

There is a shortage of foster homes for adolescents, and although ACS has been trying to focus on recruitment for this population, for many of our clients the efforts are too little too late. We continue to hear caseworkers say things like, "no one is going to take him because he is a teenager." Many agencies still do not adequately address the differences between raising young children and raising adolescents; there must be ongoing, very specific adolescent training for foster parents and agency staff, with more intensive support to assist foster parents through the trials of adolescence and young adulthood.

Once in foster care, for those who will not be discharged to a family, the City must work intensively to access all available housing options. Young people should never be formally discharged or informally pushed out of foster care to homelessness – whether that takes the shape of a discharge to a location that is unstable, or an outright (and illegal) referral to

emergency shelter. Children who experience foster care already suffer trauma. Our City should never add to that trauma by failing to ensure that those children have safe and stable permanent housing when they leave foster care.

Thank you for this opportunity to testify. We will be happy to answer any questions the chairs and committee members have.

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