

TESTIMONY

“Oversight and Accountability of the Child Welfare System”

Before the

**New York State Assembly
Standing Committee on Children and Families
William Scarborough, Chair
Subcommittee on Foster Care
Naomi Rivera, Chair
New York City, November 13, 2008**

**THE LEGAL AID SOCIETY
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Good morning. I am Tamara Steckler, Attorney in Charge of the Juvenile Rights Practice (“JRP”) of The Legal Aid Society of the City of New York. I thank Assembly Member Scarborough and Assembly Member Rivera and the Committee and Subcommittee for providing The Legal Aid Society with an opportunity to be heard concerning the quality of care provided to children involved with our child welfare system.

The Legal Aid Society is the nation’s largest and oldest provider of legal services to poor people. In our Juvenile Rights Practice, we provide comprehensive representation as attorneys for children who appear before the New York City Family Court in child protective, juvenile delinquency and other proceedings affecting children’s rights and welfare. Each year, our attorneys are assigned to represent approximately 35,000 children, of whom almost 90% are clients in child protective proceedings. Nearly half of our clients are aged 12 and over. Our perspective comes from our continual contacts with children and their families, and also from our daily interactions with the courts, health care providers, foster care agencies, and State and City government agencies, including the Administration for Children’s Services (“ACS”) and the State Office of Children and Family Services (“OCFS”).

New York State has both legal and moral responsibility for the health and well-being of children who are in the care of its local child welfare agencies. The ability of the local agencies to provide quality services for those children and their families is vital, and a key to ensuring that those services are provided is continuing and vigilant oversight by the State. These hearings serve a crucial function for oversight of OCFS and the local child welfare agencies, and we urge you to demand accountability from these agencies.

The most important message I can bring to you today, in the complex array of questions

this hearing presents, is this: It is essential that all of the people who affect the lives of children and families involved in child welfare proceedings have sufficient training and resources to do their jobs well, and that they are held accountable when they fail. Tragically, too many children and families with whom we work in the course of our representation in Family Court do not receive the services to which they are entitled, and do not fare well in the foster care system. Many children's health and well-being are ill-served, families remain separated while cases languish in the courts, mental health needs are not addressed, and the needs of older children get short shrift. These are just some of the many issues that need the unceasing attention of policymakers and legislators.

Foster Care Agencies Must Improve Services to Children and Families

Thousands of children enter the child welfare system every year and, with no scientific formula for determining what is best for each, caseworkers and their attorneys have the arduous task of deciding which families should remain intact while receiving preventive services and which should be split apart while awaiting a court decision. While this judgment may be obvious in some cases, the majority of families simply do not fit in a cookie cutter mold—their needs, their problems, their attempts to remain as a family make such determinations complex and challenging. Parents do not wear signs that say what the future will bring for them or their children, they are not screaming for assistance even when they need it and their children, even abused, will often protect their parents and state their desire to remain in their home. Everyone involved in this system must make life-altering decisions knowing full well that human behavior is unpredictable at best and even the best human judgment will sometimes be faulty.

Those making these critical decisions are primarily foster care agency caseworkers whose

job it is to provide appropriate services to children and their families. To ensure that children are protected, either while in foster care or with their families, it is beyond question that everyone working on their behalf must be well-trained and expertly supervised. We should accept and expect nothing less. Agency caseworkers in this system must be uniquely proficient in child development, family dynamics, domestic violence issues, medical diagnoses and treatments, psychological implications of attachment and separation, mental illness, parenting, poverty, failing communities and the myriad of other issues that arise in the course of a Family Court abuse/neglect case. To guarantee this, the child welfare system, from beginning to end, must be properly resourced, allowing each professional involved the time required to accurately assess the needs, wants and wishes of each and every child and family. To do less is simply to care less.

In March 2007, ACS Commissioner Mattingly announced a planned overhaul of New York City's child welfare system, called Improved Outcomes for Children ("IOC"), aimed at better serving children in foster care and their families. The Commissioner said at the time that while the City had long set standards for foster care, it had not had the means to follow through adequately: "What has happened to the children once they are with the agencies has been a black box," he said, referring to his agency's lack of up-to-date information on individual cases.¹

The IOC model eliminates some ACS oversight of foster care agencies and focuses on family team conferencing as a tool to solve the problems facing children in foster care and their families. As of today, only nine of the agencies providing foster care services to New York City's children are utilizing the IOC model. Although it is too early to judge the success or failure of IOC, many of our clients are still not receiving the needed services to help them

¹ Leslie Kaufman, *New York Acts to Ease Process in Foster Care*, N.Y. TIMES March 22, 2007

achieve permanency.

The Needs of Older Children in Foster Care Are Frequently Not Met

Quite simply, New York does not serve well the growing population of older children in foster care. With devastating consequences to hundreds of young people, the needs of older youth who will leave foster care to live on their own, without returning to family or being adopted, have not been met. The situation in New York City for these children has become untenable.

Currently, half the young people in foster care with ACS and its contract agencies are aged 12 and older.² According to ACS' published data, between 60 and 100 young people each month are discharged to "another planned permanent living arrangement" ("APPLA", formerly called "independent living"), meaning that they are not adopted and not discharged from care to live with their families.³ Young people leaving foster care to live independently face far greater challenges than children not in foster care; the latter most often reach adulthood with the assistance and support of family and community. Yet 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 in many instances fulfilled their obligations, and there has been insufficient training,

² ACS' last published figure is 49.5%. http://www.nyc.gov/html/acs/downloads/pdf/outcomes/out6_citywide.pdf.

³ In ACS' monthly reports, the numbers are not broken out by age. http://www.nyc.gov/html/acs/downloads/pdf/stats_monthly_update.pdf

oversight and accountability, young people aging out of foster care often do so without a stable place to live, a job and/or ongoing education, income security, health insurance, and independent living skills.

The law in this area is clear. New York’s Social Services Law, the 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 needed.⁴ Our State Education Law guarantees young people’s educational rights – most notably to remain in school and earn a high school diploma – without exception for children in foster care.⁵ Similarly, federal and state law guarantee that young people leaving foster care may receive continuous Medicaid coverage when they leave care, *without* having to reapply.⁶

Although Commissioner Mattingly and his high-level staff have the best of intentions and plans for reforming ACS in the long run, the agency is continuing to fail the older children in its care. While we have made substantial progress through advocacy with ACS, the City’s Human Resources Administration (“HRA”) and the State Department of Health toward achieving the continuation of health insurance coverage for children leaving foster care, and hope to continue that progress until the problem is solved, other problems facing our clients are not improving. The most egregious is that ACS fails to ensure that young people aged 18-21 with a permanency goal of “another planned permanent living arrangement” have stable and adequate permanent

⁴ 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.

⁵ N.Y. Const. Art. XI; N.Y. Educ. Law 3202; 8 N.Y.C.R.R. Part 100; 20 U.S.C. §§1400 *et seq* (IDEA)..

⁶ 42 U.S.C. § 1396a(a)(10)(A)(i)(I), 1396a(e)(10)(B); 42 C.F.R. § 435.930(b); 42 C.F.R. § 431.636(b)(4); N.Y. Soc. Serv. L § 366 (1)(a)(3); 18 N.Y.C.R.R. §§ 360-2.2(c)(1), 360-2.6(b), 360-3.3(a)(4).

housing in place prior to being discharged from foster care. We have advocated with ACS for years on these issues, yet they have not been resolved. By ACS' own admission, in recent public testimony before the New York City Council and the New York State Assembly, the agency has confirmed that it is unable to confirm that children in foster care are not being discharged into homelessness; account for the post-foster-care whereabouts of the majority of young people under the age of 21 who were discharged to their own responsibility during the current year and years past; or provide any meaningful data on the magnitude of these problems.

It is our experience that, despite stated good intentions by top ACS officials, the staff at ACS and the foster care agencies with which ACS contracts for services still are not trained to take the necessary actions to ensure that the young people leaving foster care obtain stable and adequate housing prior to their discharge. As a result, few young people being discharged to APPLA have successfully obtained stable and adequate housing. *On the ground level each day, many of our clients who are leaving foster care continue to be discharged to homelessness or to temporary, unlawful arrangements such as friends' couches, former foster parents, or college dormitories, despite their legal entitlement to stable and adequate housing.*

Young people in foster care who are pregnant or parenting routinely suffer from a lack of appropriate placements and services. At the critical moment when a young person in foster care becomes a parent, the relationship between young mother and baby is frequently disrupted – not because of concern about the young person's ability to parent, but because ACS and the foster care agency fail to secure a placement for the new mother and child. This problem is the product of a system that houses pregnant girls in one residence, and then forces them to move as soon as they have their babies into “mother-child” residences, where they have to adjust to new

surroundings and new people. This service model, which builds extra layers of difficulty into the transition to parenthood, becomes disastrous when the caseworkers assigned to plan for young mothers are inadequately trained or lack the resources to provide effective services for this population. How we see this play out all too frequently is that a caseworker fails to plan with a young mother for her baby's arrival and there is no mother-child placement for them to go to; as a result, they are inappropriately separated, the young mother returning to her maternity residence, her baby remaining in the hospital, and both losing an invaluable opportunity to bond.

Parenting adolescents in foster care – like all other teens in foster care – are entitled to complete their educations and to receive assistance in securing stable housing and employment. Yet in our experience, young parents in foster care are frequently diverted by their caseworkers away from completing high school to obtaining a General Equivalency Diploma (“GED”). Too often, a lack of child care thwarts young parents' efforts to complete high school, and caseworkers assigned to young mothers in foster care are either misinformed or lack the training necessary to help a young parent access ACS subsidized child care. It goes without saying that without appropriate child care, a young parent's ability to obtain stable housing and employment and transition successfully to independence is greatly diminished.

ACS officials have expressed the willingness to focus on improving services to young parents in foster care in the context of the new IOC model. However, we have yet to observe any measurable changes in outcomes for young parents in foster care.

Inadequate Permanency Planning Leaves Many Children Unprepared to Return Home

Many young people in foster care spend time in the care of other state and City agencies,

yet this time is temporary and the young people remain in foster care with an ongoing right to meaningful planning for their future. ACS and the contract foster care agencies, however, too often fail to plan for these children, to remain involved in their lives, and to ensure that they maintain ties with siblings and community. The results are devastating. Some children in foster care, for example, because of serious mental health needs spend time in State Office of Mental Health (“OMH”) facilities such as Residential Treatment Facilities. These stays may last a year or more, but are not permanent. In another scenario, young people in foster care like other youth may be arrested and incarcerated. In fact, “twenty two percent of children arrested on a delinquency charge had an open case with ACS at the time of arrest.”⁷ Upon arrest, these young people may find themselves spending many months in the custody of the Department of Corrections, the NYC Department of Juvenile Justice, or with OCFS in one of its juvenile residential rehabilitative facilities. These children too retain the right, as foster children, to continued services and planning, which they all too often do not receive. During their time away, it often appears that the foster care system has forgotten about these children.

It is critical to a young person’s successful transition from other residential settings back to his or her community that ACS and its contract foster care agencies communicate with the child and the relevant agency staff throughout the entire period of time, and that ACS act promptly to locate an appropriate foster care placement to meet the needs of the young person whenever he or she returns. Such communication and support is particularly important given that many OMH and OCFS facilities are located outside of New York City, where children are far from their families and communities.

⁷ Statistics provided by ACS’ New York City Juvenile Justice Initiative in support of its representation that there is an overlap in the child welfare and juvenile delinquency systems in NYC

Time and time again we find a serious lack of coordination among ACS staff, foster care agency staff and the staff responsible for the child during his or her time in another system of care. This lack of coordination can lead to many problems:

- Lack of meaningful permanency planning and communication;
- Emotional trauma or deteriorating behavior, resulting from a child's uncertainty about where he or she will be placed following discharge;
- Lack of meaningful, regular contact with siblings and other family members;
- Hasty placements in inappropriate foster care settings upon discharge;
- Interruption or discontinuance of necessary services, such as mental health treatment upon return to a foster care setting;
- Lack of basic necessities, such as clothing, upon return to foster care;
- Delay in appropriate school enrollment upon return to foster care; and
- Foster care caseworkers failing to appear and/or lacking information to present to Family Court at permanency hearings.

ACS must maintain ties with children who are temporarily placed in other settings than foster care. ACS and/or its contract agency staff must visit and communicate with the children, keep the children connected to family supports, ensure that the children's basic needs are being met, communicate with relevant agency staff in the children's current setting, and promptly locate an appropriate foster care placement in preparation for discharge and assist the child with reentry into his or her community when necessary.

New York Must Promptly Implement the Federal “Fostering Connections to Success” Legislation

The recently-enacted federal “Fostering Connections to Success and Increasing Adoptions Act” includes several landmark provisions that will help children in foster care. To

take advantage of the federal funds that come with this Act, New York must work to enact conforming legislation, and we urge this Committee to take the lead in doing so, so that children's length of stay in foster care can be reduced and their treatment improved. One provision of the new law, for example, provides federal Title IV-E funding for subsidized kinship guardianships for children who remain in foster care because they cannot be returned home or adopted. If New York enacts conforming legislation, this provision will provide permanent homes for these children with their grandparents and other caring relative guardians. They will grow up in and remain connected to loving families rather than simply waiting to age out of foster care. Another provision gives children the right to remain in their schools despite being removed from their homes, and to receive transportation assistance so that they can do so. For children in foster care, who must endure on average four moves from foster home to foster home, this provision is absolutely crucial to avoid disruption of their education and the poor school performance and dropping out that so often occur as a result. We urge New York to comply with this provision as quickly as possible.

Recommendations

There is still much to be done to improve our City's and State's treatment of young people in foster care. Among other things, we recommend that:

- the State amend Social Services Law 409-a to increase the housing subsidy, set in the late 1980s at a maximum of \$300 per month and never raised, so as to allow recipients of the subsidy to rent at Fair Market Rates (similar to Section 8).
- ACS provide meaningful housing assistance to all foster care agencies and all foster care youth, ensuring that youth are able to access available priorities for subsidized housing.
- the State opt into the federal Chafee Act Medicaid law provision providing automatic coverage for former foster care youth, aged 18-21.

→ ACS improve services to pregnant and parenting teens, including ensuring continuity of placement when a young woman gives birth and prompt assistance in accessing childcare.

→ ACS eliminate the practice of separating young mothers in foster care from their children due to ACS' failure to timely secure appropriate mother/child placements.

→ OCFS, OMH and ACS engage in meaningful permanency planning for young people in foster care who are temporarily in other systems. Such planning should include developing a protocol that assigns specific tasks to the agencies responsible for ensuring a young person's successful transition back to his or her community.

→ the State take the lead in ensuring that the Legislature enact conforming legislation to take advantage of the benefits to children and their families provided by the "Fostering Connections to Success and Increasing Adoptions Act."

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