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RECOMMENDATIONS OF THE CONFERENCE ON ACHIEVING JUSTICE: PARENTS AND THE CHILD WELFARE SYSTEM

I. RECOMMENDATIONS FOR CASE MANAGEMENT

A. Background

The Case Management Working Group organized its short- and long-term recommendations according to the range of case management services potentially available to families involved, or at risk of involvement, with the child protective service system. The range of services was divided into three areas: (1) services to families that can help prevent involvement with the protective services system; (2) services related to the screening of reports of abuse or neglect and the investigation of those reports; and (3) services related to the prevention of foster care placement, services provided to children while in foster care, and services provided once families are reunified. Training recommendations spanning all three areas of service were also created.

The working group recognizes that while city and state child welfare agencies are called upon to implement the following recommendations, they need the support and participation of parents, advocates, schools of social work, contract agencies, and other concerned stakeholders outside of child welfare (i.e., colleagues in the fields of public health, housing, education, employment and training, substance abuse, mental health, domestic violence, psychology, and youth development).

B. Recommendations

1.1. Access to services and prevention:

1.1.1. The local/community-based Administration for Children's Services ("ACS") child welfare offices should be a source of information and referral for the range of services in the community that all parents often need (i.e., day care, employment, financial assistance, housing, supportive counseling).

1.1.2. All persons involved in child welfare services should support the development of services that could benefit all parents in fulfilling their care-taking role (i.e., universal parent education, home visitation

of all newborns, family centers in schools, multi-service centers). By developing this more universal type of service system, parents in need of help would be able to get it without being stigmatized or labeled.

1.1.3. All persons responsible for research on preventive and protective services within the child welfare system should ensure that parents who have been involved in the child welfare system (parent advocates) are included as participants in this research.

1.1.4. All persons responsible for training mandated reporters should include in that training ways professionals can help parents access the services they may need.¹

1.2. Screening and investigation:

1.2.1. New York State's Child Welfare Agency, the Office of Children and Family Services ("OCFS"), should pilot the dual track approach to child protection, and New York City's child welfare agency, ACS, should participate and seek changes that would permit it to try this approach. The dual track assigns cases based on the level of severity of the report to either an investigative track or a family assessment track. The investigative track uses a more traditional approach that focuses on the imminent danger or risk to the child. The family assessment track emphasizes engaging the family around concerns for the child and gaining the family's cooperation in identifying service needs and participating in programs to address the concerns that led to a report being made.

1.2.2. NYC's child welfare agency, ACS, and the Family Court should shift the current emphasis from proving or disproving the allegation of abuse or neglect in both the casework investigation process and Family Court process to more of a focus on finding ways to strengthen the family through the provision of services.

1.2.3. NYC's child welfare agency, ACS, should continue its efforts to hire master's level social workers ("MSWs") and to send caseworkers to graduate schools of social work through its scholarship program. MSWs should be deployed and utilized in positions that involve critical decision-making about families.

1.2.4. Program planners at the New York State child welfare agency, OCFS, and New York City's child welfare agency, ACS, should expand the risk assessment instrument used in child abuse or neglect investigations to assess not only the risk of abuse and neglect by the parents, but also to assess the risk to the children if separated from their families.

1. A recommendation to eliminate mandatory reporting and leave reporting to the discretion of professionals in accordance with their ethical codes was voted down by a margin of fifty-five to forty-five percent. See *Report of the Case Management Working Group*, 70 Fordham Law Rev. 363 (2001), for a discussion of this issue, which the group seems to have believed was at least worthy of further study.

1.2.5. Those responsible in the child protective services system for training and for reviewing cases need to make sure that the interventions recommended in the case plan respond to the needs and strengths identified in the assessment.

1.2.6. New York State needs to develop a screening system for child abuse and neglect reports that is community-based. This would mean that staff who screen reports of abuse and neglect would be part of the locally based protective service system. The reason for this recommendation is that screeners who are part of the community, rather than based in one central location (Albany), would more likely have a better understanding of the community and culture from which the report of abuse and neglect is coming and, therefore, be in a better position to make more accurate screening decisions.

1.2.7. Those responsible for the training of child protective service managers should include the consumers of services—that is, parents who have been involved in the child welfare system—in their training.

1.3. Placement prevention, foster care, and reunification:

1.3.1. NYC's child welfare agency, ACS, should strengthen the seventy-two hour case conferences where protective service staff, parents, and community service providers convene following a placement. Specifically, more emphasis should be placed on resolving the family needs and problems that led to placement and doing more to ensure that parents and their supports are present and actively participate. In addition, more conferences should be held before placement.

1.3.2. Child Protection Managers ("CPMs"), who ultimately make the decisions to remove children, should be required, when necessary, to go to court to answer questions about their decisions.

1.3.3. Those persons responsible for training caseworkers and foster parents should involve parent advocates in the training as a way of increasing worker sensitivity to parental issues and their overall ability to work effectively with parents.

1.3.4. NYC's child welfare agency, ACS, and all private agencies providing foster care services should change the culture around parent/child visits so that visits are not treated by the worker as a perk or as something for the parent to earn, but rather as a responsibility of parents that the worker should support and strengthen.

1.3.5. New York State's child welfare agency, OCFS, in cooperation with the NYC child welfare agency, ACS, should restructure its case recording formats (Uniform Case Records or "UCRs") to promote strengths-based child welfare assessments and practices. Specifically this would mean having more information required in the record about family strengths.

1.3.6. NYC's child welfare agency, ACS, private contracted social service agencies, and the Family Court should examine the role of language and how it can be changed to promote changes in practice.

Specific suggestions for change include modifying the terms “visitation” to “visiting” or “parenting and natural/biological/birth parent” to “parent.”

1.3.7. NYC’s child welfare agency, ACS, needs to examine ways to ensure that improvements in training at its training academy and its MSW scholarship program are supported and fully utilized in the field. This means finding ways to support workers who are trying to implement a more family-centered approach and face resistance to this new approach by supervisors or managers.

1.3.8. NYC’s child welfare agency, ACS, should develop as part of the system of accountability a consumer-oriented evaluation in which parents regularly provide input and feedback about how the system is working.

1.3.9. NYC’s child welfare agency, ACS, should establish a citywide clearinghouse (i.e., information bank, resource center) accessible to both parents and professionals working with families to provide information about the range of social services and concrete services available to families.

1.3.10. NYC’s child welfare agency, ACS, and contract foster care agencies should develop a “career track” for parent advocates within the system as a way of institutionalizing parental involvement.

1.3.11. NYC’s child welfare agency, ACS, and contract child welfare agencies should reexamine their organizations’ cultures (i.e., mission, values, goals, training, hiring practices) in relation to strengthening the role of parents and the quality of services provided to them.

1.4. General training recommendations that apply to all areas of case management:

1.4.1. Those responsible for the initial and ongoing training at NYC’s child welfare agency, ACS, need to focus on increasing (a) caseworker awareness of the cultural differences among clients and (b) caseworker understanding of ways to work effectively with cultural differences.

1.4.2. Those responsible for NYC’s child welfare agency, ACS, training can contribute to the development of a system that is strengths-based by training workers in all parts of the system to see themselves as change-agents who can make a positive difference in the lives of families.

C. Questions for Further Study Raised by the Working Group

1. Should child protective workers be the professionals who possess the most skills? If yes, how will the problem of more skilled workers being supervised and managed by less skilled workers be dealt with?

2. Under the present system, should attorneys be able to attend the 72-hour conferences?

3. What are the keys to successful implementation of programs and initiatives on both a policy and practice level?

4. How can the child welfare system move toward a more family-centered approach and still maintain its ability to protect children at risk?

5. Should New York State consider more seriously the option of not accepting federal funds as a way of dealing with the constraints these funds place on some of the more creative reform efforts?

6. How are existing laws (i.e., Adoption and Safe Families Act, mandatory reporting) that are currently driving the child welfare system really impacting parents and families?

II. RECOMMENDATIONS FOR EDUCATION

2.1. Graduate schools (law, social work, psychology, and psychiatry) should educate professionals to better achieve justice for parents by incorporating the following recommendations:

2.1.1. Achieving justice for parents within the child welfare system is contingent upon a team approach. We define team approach as the collaboration between and amongst disciplines. We recognize that this is not usually supported in practice and is taught on a limited basis in graduate schools; therefore, we recommend that all graduate schools enhance and/or increase exposure to, and practice of, interdisciplinary/inter-professional collaboration. This may include team teaching, interdisciplinary field placements (clinics, internships, or externships), interdisciplinary colloquiums, and cross-registration between graduate schools.

2.1.2. To support and extend interdisciplinary/inter-professional practice within the child welfare system, each graduate school should enhance its curriculum with substantive content and skill development from other disciplines and professions.

2.1.3. Graduate schools should integrate issues of class, race, culture, and gender into all curricula and help students to explore the ways in which issues of race, class, culture, and gender may impact justice for parents in the child welfare system. In addition, each graduate school should develop mechanisms to enhance students' abilities to recognize and appreciate the impact of their race, class, ethnicity, and gender on their work with clients.

2.1.4. To increase diversity of professionals in the child welfare system and to support a diverse work force that is reflective of the population served, graduate schools should make concerted efforts and specific plans to increase enrollment and retention of people of color.

2.1.5. Schools of social work should explore the desirability of requiring an ethics course as part of the core curriculum.

2.1.6. Schools of social work, psychiatry, and psychology, should support and extend the teaching of a strengths-based perspective—that is, focusing on personal and interpersonal resources the family brings to the situation that can be mobilized and built upon.

2.2. Graduate schools (law, social work, psychology, and psychiatry) should provide continuing education to professionals to enable them to achieve justice for parents by incorporating the following recommendations:

2.2.1. Graduate schools should collaborate in developing an in-depth, interdisciplinary certificate program for social workers, lawyers, psychologists, and psychiatrists working in the child welfare field to help professionals learn to work together more effectively. The respective schools should grant continuing education credit.

2.2.2. Graduate schools for lawyers, social workers, psychologists, and psychiatrists should develop (a) in-depth child welfare certificate programs within their own disciplines and (b) continuing education programs for professionals from their disciplines working in the child welfare system.

2.3. Graduate schools (law, social work, psychology, and psychiatry) should promote systemic changes to better achieve justice for parents by incorporating the following recommendations:

2.3.1. Engage in interdisciplinary collaboration to set and prioritize a research agenda that specifically examines issues of justice for parents, such as (1) legal services for parents and (2) mandated social service programs.

2.3.2. Act as a catalyst to develop one or more models to improve legal representation of parents (e.g., sponsorship of innovative conferences and providing resources to implement the recommendations such as interns, evaluation, and training).

2.3.3. Encourage schools to work in collaboration to explore, study, and evaluate alternative service models such as mediation, family case conferencing, and court diversion.

2.3.4. Collaborate with appropriate sectors of the child welfare system to support educational initiatives for parents.

III. RECOMMENDATIONS FOR ETHICS AND PROFESSIONALISM

A. Preamble

Children, parents, and families in child welfare proceedings are entitled to justice. Social workers, psychologists, and attorneys representing parents in child welfare are ethically and professionally bound to work zealously to ensure justice for those whom they serve and to serve them competently.

As a matter of professionalism and ethics, the current form of representation for parents² cannot continue. Competent representation for parents requires an interdisciplinary approach. In developing a strategy to provide adequate, comprehensive representation, there must be recognition that the legal, psychological, and social needs of the family are inextricably intertwined and must be addressed through a timely, coordinated, interdisciplinary approach. It is essential that there be a duty of collaboration among professionals and that professionals recognize the limits of their competence and draw on the expertise of members of other professions.

B. Recommendations

3.1. Developing standards for interdisciplinary professional services:

3.1.1. Organizations that set codes of conduct and standards of practice³ for the legal, social work, and psychology professions should collaborate in the development of proposed standards to guide professional participants in the child welfare system. These standards should recognize that members of different professions should work collaboratively and serve the legal, social, and psychological needs of families. These standards should recognize the principle that members of different professions should respect the responsibilities and ethical duties of other professions. Judges, lawyers, and other professional participants in child welfare services should also recognize the principle of avoiding harm and lessening harm to children and families involved in the child welfare system.

3.1.2. Each organization that sets ethical codes and standards of practice for the legal, social work, and psychology professions should ensure that its code and standards of practice address the issues that arise from interdisciplinary representation.

3.1.3. The National Association of Social Workers (“NASW”) Code of Ethics is the primary source of ethical guidance for social workers. The NASW Code of Ethics does not address professional responsibilities of social workers in relation to forensic social work — that is, the application of social work to questions and issues relating to law and legal systems. The NASW Code of Ethics should be amended to include a forensic section.

3.2. Representation. Effective interdisciplinary work providing legal, social, and psychological services to families requires the

2. “Parents” includes extended family members or other caretakers, other than foster parents.

3. Examples of these organizations that establish codes of conduct and standards of practice for their professionals include the American Psychological Association, the New York State Bar Association, and the National Association of Social Workers.

collaboration of members of different professions with specialized training:

3.2.1. Representation of parents unable to afford an attorney in Family Court proceedings should be provided by a non-profit, legal assistance agency with specially trained attorneys and social workers, as well as other clinical and investigative support.

3.2.2. Competent representation for parents in Family Court proceedings requires an interdisciplinary approach, including attorneys, social workers, psychologists, support services, and other organizational support.

3.2.3. Members of the attorney panel assigned under the provisions of article 18-B of the County Law, who currently represent parents in child welfare matters, are not afforded adequate resources, including adequate access to the expertise of, and collaboration by, those in other professions. Further, such attorneys are not afforded adequate compensation to ensure that they will provide competent and zealous representation as required by standards of ethics and professionalism. In light of the inadequacy of resources, the current system of representation for parents must be reformed or replaced.

3.2.4. As part of their representational duties, attorneys for parents should talk directly with caseworkers from New York City's public welfare agency, ACS, and voluntary agencies, which deliver services to parents and children. The New York Code of Professional Responsibility permits such communication "on the subject of the representation,"⁴ provided the lawyer for the parent has the prior consent of the lawyer representing the caseworker. Arguably, the Code also permits communication between attorneys for parents and caseworkers without such prior consent. Because of the multiple parties involved and the need for direct communication on a regular basis, ACS, in consultation with other legal professionals, should develop a protocol that allows attorneys for parents to speak with ACS and other agency caseworkers regarding service planning issues. The protocol should be detailed and identify the specific areas attorneys for parents and caseworkers are permitted to discuss, including, but not limited to, how the parent is doing, services being provided to the family and those which are not.

3.3. Scope of professional services:

3.3.1. Public funding should be expanded to ensure that the scope of representation provided to parents includes "wrap-around" legal assistance to address representation regarding related issues such as housing, welfare, medical coverage, etc.

3.3.2. Attorneys for all parties and social workers in child welfare matters should take steps to ensure that necessary proceedings in all forums regarding services and foster care placements are initiated,

4. N.Y. Code of Prof'l Responsibility DR 7-104 (1999).

court orders for specific services to parents are obtained, including visitation, and orders requiring services to parents are followed and enforced.

3.3.3. The Legislature and courts should ensure that parents in child welfare matters have continuity of representation throughout Family Court periodic review proceedings, in related proceedings such as those under article 78 of the New York Civil Practice Law and Rules, and in the trial and disposition of an appeal.

3.4. Informing and educating parents:

3.4.1. Professional participants and parents should clarify, develop, and use a common vocabulary to understand and specify their roles and their various relationships in child welfare matters. General and multi-purpose role labels such as “client” should be replaced or avoided when possible.

3.4.2. The Family Court and agencies coming into contact with families should make available in written form a “road map” showing the various professionals involved, delineating the roles of the professionals, and explaining the respective limits of confidentiality so that parents know the parameters as early as possible.

3.4.3. The Family Court should provide parents who are involved in the court process with immediate access to an orientation/training session that includes information on the court process, the rights and responsibilities of parents, the various professionals involved and their roles, and other key issues. Agencies working with families involved in the Family Court process should also make this information/training available. Public funding should be provided for these training sessions.

3.4.4. Public funds should be allocated for the creation of a community-based public awareness campaign to educate parents about the New York City child welfare system. The campaign should address parents’ rights and responsibilities, such as what to do if child protective services knocks on the door, what to expect from case conferences and court hearings, and other key areas.

3.4.5. Lawyers representing parents in child welfare matters and other professionals involved in delivering services should provide complete information to parents about the benefits and risks of participation in services (such as counseling, preventive services, etc.), whether the services are court-ordered or not. Professionals involved in providing such counseling and treatment services and their employing agencies should ensure that there are criteria for the proper maintenance of confidential treatment notes and records. Treating professionals and their employing agencies have a further obligation to inform and fully disclose to parents the nature and limits of the professional’s and agency’s obligation of confidentiality, including procedures for obtaining the parent’s informed consent prior to release of confidential information.

3.5. Confidentiality and disclosure:

3.5.1. Legislation should be proposed to ensure that in Family Court proceedings a therapist would not be compelled to testify about confidential treatment notes and records, or to turn over records, unless the court finds upon in camera review that the need for the evidence outweighs the harm to the therapeutic relationship. In the interim, all parties, including the court and child welfare agencies, should be sensitive to the need for the confidentiality of treatment records and notes and not routinely order or request that such records be subpoenaed.

3.6. Judicial role and responsibilities:

3.6.1. The Family Court judiciary should establish a special training academy to assist judges to better understand and evaluate expert evidence. The academy should be staffed by professionals from all relevant disciplines, with a curriculum to include: family dynamics; child development and related research issues; early intervention services; culture, race, ethnicity, gender, issues of poverty, economic class, and their impact on the delivery of child welfare services; and clinical treatment methods and their relative merits within the framework of the child welfare system.

3.6.2. As provided by section 124 of the Family Court Act, in making appointments to the Family Court bench, the Mayor of the City of New York should select individuals who are specifically qualified by reason of character, personality, tact, patience, and common sense.

3.6.3. Family Court matters should be heard and reviewed by judges trained in Family Court matters. The Family Court should continue to explore ways to reduce fragmentation and provide continuity and consistency in case management of family disputes; however, Family Court matters should not be consolidated with Criminal Court matters, nor should they be heard or reviewed by Criminal Court judges.

3.6.4. The Family Court administration and judiciary have an obligation to reduce adjournment and delays and the overall amount of time a party waits to be heard in court. These adjournments and delays have serious and long-term deleterious effects on the parent-child relationship. The court administration and judiciary should place top priority on the development of a calendar system that prioritizes the hearing and disposition of article 10 cases.

3.7. Role and responsibility of government and social service agencies:

3.7.1. Given the abrogation of the therapeutic privilege in Family Court article 10 proceedings—that is, communications are not confidential—in order to ensure the greatest possible confidentiality for communications by a parent to a therapist, child welfare agencies should take steps to ensure that professionals who perform initial

assessment and evaluation functions are separate and different from those professionals who counsel and treat parents.

3.7.2. As a matter of professionalism and ethics, judges, lawyers, social workers, psychologists, and other professional participants in child welfare matters are not only required to perform duties competently within the framework of the Family Court Act and Social Services Law, but they also have a duty to take proactive steps to ensure that meaningful assistance to families in crisis is provided, adequate resources are made available to public and private agencies, and sufficient resources are provided for these services.

3.7.3. Foster care agencies should encourage and facilitate attendance at service plan reviews of parents, the child placed in foster care (if the child is ten years or older), the child's law guardian, and counsel for, or a representative of, the parents. Service plan reviews are administrative case conferences held to review the family service plan for children in foster care. Reviews take place within the first ninety days following the preparation of the plan and at least every six months thereafter.⁵ A social worker working with the parent's attorney is the ideal representative for the parent at service plan reviews. If the parent's attorney will be attending, the attorney should put the foster care agency on notice.

C. Questions for Further Study Raised by the Working Group

1. Should there be exceptions to mandated child abuse and neglect reporting requirements for certain identified licensed or certified professionals providing therapeutic psychological treatment to parents based on factors that consider the impact of a report on the present treatment of the parent and the existence of imminent harm or risk to the child?

2. Should a social worker or other professional employed by, or working with, an attorney representing a parent in a child protective proceeding be exempt from mandated child abuse and neglect reporting law requirements?

IV. RECOMMENDATIONS FOR FUNDING

A. Preventive Services

1. Background

The current public child protective system is problematic because it is limited in its responses to family problems. While the current system identifies families where serious abuse has occurred, it also

5. N.Y. Soc. Serv. Law § 409-e (McKinney 2001).

includes families that primarily have subsistence or health needs like housing and welfare, who do not belong in the public child protective system. Poor families, particularly families of color, are disproportionately captured by the public child welfare system. This group urges that other public child welfare system models be examined to assess whether investigation by the agency is appropriate or whether the family simply requires preventive services.

2. Recommendations

4.1. Preventive and support services are necessary to stabilize families disrupted by their involuntary involvement with the public child welfare system and to enable the speedy reunification of families that are already separated.

4.2. The amount and proportion of funding for preventive and support services, and training necessary to provide these services, should be increased. Funding for preventive and support services should include monitoring of the effectiveness of these services:

4.2.1. Services should be targeted at specific communities and address the community needs as defined by the community itself.

4.2.2. Services should be targeted to provide for adolescents. Services for adolescents should include funding for creative programs aimed to assist children aging out of the foster care system and should include job training, money for college funding, and funding for ongoing support.

4.2.3. Additional aftercare services for reunited families and services aimed at children transitioning from foster care should be provided.

4.2.4. Programs to promote the economic stability of parents in all phases of their involvement in the public child welfare system, and for families who are reunited, should be funded.

4.2.5. Living spaces for "families at risk," where families could reside together and receive services on the premises, should be funded.

4.3. Funding sources and strategies:

4.3.1. Use the required amount of state dollars to pay for family support services, rather than using federal funds from Temporary Assistance to Needy Families ("TANF") surplus. This will make New York eligible to get matching funds from the Federal Safe and Stable Families Program, which requires that states spend a set amount of state dollars for family support services.

4.3.2. Return to categorical funding (funds dedicated to specific services):

4.3.2.1. Support Assembly Proposal A6875 to fund preventive services at sixty-five percent match and, in 2004, any counties that

have decreased foster care caseloads could receive seventy-five percent match.

4.3.3. Support Assembly Proposal A6875 “quality enhancement fund,” and use funds for innovative pilot projects such as those that promote parental involvement.

4.3.4. Flexible funding should be available to assist parents at risk such as discretionary funding for front-line workers to use to prevent homelessness or purchase necessary appliances such as refrigerators, stoves, or washing machines that would lead to safety in the home and avert unnecessary removal of children.

B. *Legal Representation*

1. Background

Parents involved with the public child welfare system have a constitutional right to counsel and must receive the quality of legal representation to which they are entitled. The current system through which parents receive representation is in crisis. There are too few attorneys available to represent parents, and the attorneys available for parents have overwhelming caseloads. This group recommends that the following steps be taken to increase the availability of attorneys and improve the quality of representation for parents.

2. Recommendations

4.4. Funding should be provided for community-based legal services available to parents involved in Family Court proceedings using the legal services model. Community-based legal services would provide an infrastructure of training and supervision, community connection to other organizations, continuity of services, and representation for families on collateral legal matters (e.g., government benefits). Community-based offices would improve clients’ access to, and relationship with, their attorneys outside of the courthouse and in the community.

4.5. Funding for court-appointed attorneys (18-B panel in New York) should be increased to \$75/hour and should include adequate support services for attorneys (i.e., social workers).

4.6. Court-appointed attorneys who represent parents in the public child welfare system should be evaluated and monitored, and the evaluations should include the views of parents in the system.

4.7. Parent advocacy groups should be given funding and space in Family Courts to create independent Parent Advocacy Offices staffed by parents who have been through the system. These parent advocates should be trained and paid to support and provide consultation to parents in need. These groups should be “parent-

driven.” These organizations are not intended to replace other services, but are meant to ensure the accountability of other professionals in the system.

C. *Reporting and Monitoring*

1. Recommendations

4.8. Reporting and monitoring of public funding for family support services. Identifying unspent funding:

4.8.1. Money allocated for family services and support is often unspent. Public funding for family preventive and support services should be monitored to identify unspent funds and to ensure that allocated funds are spent appropriately.

4.9. Salaries should be increased for caseworkers and child care workers (who work in group homes and residential treatment centers) in not-for-profit contract agencies responsible for finding permanent placements for children and overseeing their safety and well-being in foster care. Increased funding for caseworkers' salaries will encourage the long-term retention of caseworkers who can then oversee cases during children's entire stay in care. Long-term caseworker retention will facilitate better relationships between parents and caseworkers, give caseworkers time to better understand the family's needs, and thereby, expedite reunification of the family:

4.9.1. Funding should be provided for more caseworkers and childcare workers (as defined in section 4.9). An increase in the number of caseworkers will reduce the number of cases per caseworker allowing them to process cases more thoroughly and quickly and ensure that parents get the services they need.

4.10. Media education campaign:

4.10.1. There should be funding to design and develop a media campaign to inform and educate the general public about what is really happening to children and families involved in the public child welfare system and the role and means by which the public child welfare system disrupts families. The goal of this media campaign is to dispel the myths surrounding these families and to promote a positive and realistic image of parents and communities. Parents who have been through the system should be involved in this media campaign.

4.11. Funding should be enhanced for innovative programs which could provide services like those found in New York City's Family Treatment Court (which is premised on swift referrals to treatment; frequent and consistent court monitoring of parent's recovery; assigned individual case managers; and full participation by child protective agencies, law guardians for the children, and attorneys for the parents), programs that provide personnel to act as liaisons

between the court and the public child welfare system and conflict resolution, and mediation programs that use interdisciplinary approaches.

V. RECOMMENDATIONS FOR THE JUDICIARY AND THE COURTS

A. *Background*

The Family Court judiciary has, as its core judicial function, the requirement to establish a process that provides parents with due process of law. Due process encompasses a courtroom environment that is understandable, fair, and empowering to the parties. The group envisions an active judiciary, with broad interdisciplinary knowledge and a commitment to monitoring the impact of the system on parents. The judge should exercise scrupulous fairness in his or her role as trier of fact and “CEO” of the case management process.

Many of the services recommended by the working group would also serve the needs of children in foster care. However, the mandate of this working group was to focus on the needs of parents in the child welfare system.

B. *Recommendations*

5.1. Conferencing:

5.1.1. Judges should conduct a full “reasonable efforts” inquiry at the inception of the proceeding.

5.1.2. If a removal has already occurred, judges should ask whether a pre-removal conference has been held in the community. If it has not, judges should, as soon as possible, convene an in-court conference at which the parties should be directed to address the issues of imminent risk, preventive services, and parental supports in the community.

5.1.3. In appropriate cases, a social worker advocate should be provided to the parents from the inception of the case, payable by the county if the respondent is indigent.⁶

5.1.4. Judges should promote and support the use of ongoing non-adversarial case conferencing through the life of the case and should schedule frequent conferences to foster consensus among the parties.

5.1.5. The court should support the development of family service plans which reflect genuine consultation with parents and clear accountability for the tasks outlined in the plan.

5.1.6. At intake, parents should be supplied with forms (such as those used in the Model Permanency Planning Part in Manhattan) where they can identify family and other resources by order of choice

6. N.Y. County Law § 722-c (McKinney 2001).

and priority. The court should direct New York City's child welfare agency, ACS, to investigate these resources forthwith by order of parental choice.

5.1.7. At intake of a case, parents should be provided with written material, prepared by knowledgeable advocates in the field and approved by the court, summarizing court procedures and their legal rights.

5.1.8. The intake process should be revised so that parents and their attorneys have the opportunity to review the petition before appearing in court.

5.1.9. The court should encourage the use of preventive services and family rehabilitation programs to avert placement, or to speedily reunite families, at the point of intake and throughout the case.

5.1.10. The court should conduct scrupulous, meaningful, and strong reasonable efforts inquiries. The court should encourage pre-removal applications and discourage removals without court order.

5.1.11. The court should adopt rules which set forth standards for conference preparation and content so that parties come to conference prepared to proceed.

5.1.12. In recognition of the enormous impact of removal on children, the court should foster policies which include longer periods of monitoring after their return home, rather than lengthy periods of placement.

5.1.13. The court should direct all counsel to appear at judicial conferences with personnel (including foster care agency personnel, if necessary) who have the discretion to consent to the interim placement service issues and to a final disposition of the case.

5.2. Increased judicial resources and resource use:

5.2.1. There need to be more judges and active legislative advocacy to accomplish this goal.

5.2.2. Increased numbers of judges and attorneys are insufficient to positively affect the system without social workers for parents and effective representation for parents. Judges should monitor the quality of representation provided through monitoring mechanisms that articulate basic standards for adequate representation in a Family Court Act, article 10 proceeding.⁷

5.2.3. There needs to be immediate legislation that not only raises assigned counsel (in New York, called "18-B") rates and equalizes the rates for in-court and out-of-court work, but also funds an institutional parent representation model which ensures representation at every juncture as an integral part of the system:

7. See also *infra* section 6.3.3 (stating that "[t]here should be established standards of practice for representing parents to ensure skilled and zealous advocacy").

5.2.3.1. Social workers for parents are an integral part of parent representation and should be appointed by the court as the rule, rather than the exception to the rule.

5.2.4. Judges should be provided with the resources to schedule more interim monitoring dates and more frequent case conferencing. The court should schedule regular conferences from intake through disposition. The conferencing process builds fruitful relationships and is a crucial element of moving forward the family reunification process.

5.2.5. Judges should advocate that new courthouses in Queens (in process of construction) and in Brooklyn (not yet begun) include adequate rooms for referees and attorney-client consultation.

5.2.6. The court should allocate funding to provide each judge with a social worker employed by the court system. Roles for this social worker should include presiding over conferences in which service plan issues can be reviewed and fostering communication between social workers for parents and other parties, including ACS and agency workers, to assist in family reunification efforts.

5.2.7. The court should set short dates for post-dispositional review. Where a discharge decision or recommendation has been made, the court should play a meaningful role in facilitating the discharge, including assigning a referee or social worker to conference the case at intervals to be determined by the court.

5.2.8. The court should continue parents', attorneys', and social workers' assignments post-disposition to provide continuity of representation.

5.2.9. The court should review the current allocation of judicial resources in the Family Court, with an eye towards allocating more judges to hear child protective and permanency cases (in New York, Family Court Act, article 10).

5.2.10. The Office of Court Administration ("OCA") should advocate for additional funding for staffing and space to support the increased number of parts.

5.2.11. OCA should support a state constitutional amendment to increase the number of Family Court judges in New York State.

5.3. Calendaring and monitoring:

5.3.1. Cases should be called at a time predetermined by the court, with the times given in advance to the parties. Judges should be mindful of the impact of adjournments on parents, in terms of delayed visitation and family reunification, as well as conflicts with other necessary obligations related to employment and child care, and should take steps to ensure that parties and counsel appear ready and on time for court appearances.

5.3.2. Judges should be supplied with resources, both staff and technological, to facilitate timely calling of cases.

5.3.3. Judges should monitor removals. Removals effectuated without court orders and without imminent risk of harm should be reversed. Judges should promote and foster good practice in this area as a way of meeting their judicial mandate.

5.3.4. There should be close court monitoring of cases. In Manhattan's Special Expedited Permanency Part (a Model Court part), agencies showed themselves more willing to leave children in the home where they were assured of courts' monitoring of child protective needs.

5.3.5. Judges should monitor the quality of representation parents receive through a variety of mechanisms, including in-court inquiries, which ensure that parents understand their rights, written evaluations of appointed counsel performance, and clarification to counsel of the expectations of the court.

5.3.6. The State Bar or another duly constituted body should be asked to formulate standards for attorneys who represent parents in Family Court proceedings.

5.3.7. The court should support the Appellate Division, First Department's recommendation that assigned counsel rates be raised by the Legislature and that a community-based institutional model for parent representation be funded.

5.3.8. The panel supervising court-appointed lawyers (in New York, called "18-B") should be provided with copies of vouchers submitted by counsel, which should outline the activities conducted by counsel on a case so as to assist them in better monitoring quality of representation.

5.3.9. Parent attorneys should be trained in issues which relate to their clients' legal needs in dependency proceedings (e.g., housing, public benefits).

5.3.10. The court should sign orders permitting retention of social workers, paralegals, or other experts, to assist counsel for parents in addressing their clients' legal needs in areas related to family reunification.

5.3.11. The appellate divisions should develop lists of experts in areas ancillary to child welfare cases such as housing, public benefits, and domestic violence, and should provide this information to panel attorneys. The appellate divisions' current resources directories should be further expanded to include references to these experts.

5.4. Need for further judicial training:

5.4.1. Family Court judges should receive training by professionals from all relevant disciplines, with a curriculum to include family dynamics; child development and related research issues; early intervention services; culture, race, ethnicity, gender, issues of poverty, economic class, and their impact on the delivery of child welfare services; and clinical treatment methods and their relative merits within the framework of the child welfare system.

5.4.2. Steps should be taken to promote more substantive dialogue between judges and service providers (ACS and agencies serving the borough in which the judges sit). These discussions should address issues like increased and flexible parent-child visitation and promotion of quality activities for parents and children during visitation (like music therapy).

5.4.3. As part of ongoing judicial training, contract foster care agencies should make presentations to the court, explaining the resources they have available for clients.

5.4.4. The court and ACS should work together to ensure that everyone involved in handling cases is aware of current changes in agency policy such as (in New York) the recent change in policy regarding family visitation.

VI. RECOMMENDATIONS FOR PARENT REPRESENTATION

A. Preamble

There is an acute crisis in the current system of legal representation for parents in New York Family Court. Parents, who are predominantly poor people of color, are denied effective assistance of counsel under the current system that fails to provide sufficient funding and resources to support parents' attorneys. Parents are denied meaningful participation in all aspects of child welfare policy and law-making. We propose that there be a more equitable system of parent representation, which would contain the following components and promote respect for parents as full participants throughout the process: an enhanced assigned counsel panel and a newly-created Parents' Law Office.

B. Recommendations

6.1. System:

6.1.1. The rates for assigned counsel should be increased to a level that supports effective representation, which should include funding for all necessary auxiliary services:

6.1.1.1. These rates should be the same for in-court and out-of-court work.

6.1.2. The system must fund a dual model of parent representation: AN ENHANCED ASSIGNED COUNSEL PANEL AND A NEWLY-CREATED PARENTS' LAW OFFICE.

6.2. Parents:

6.2.1. Parents have the right to be informed about their rights and responsibilities and the role of their lawyers at each stage of the court proceedings in a manner that they can understand.

6.2.2. Parents should have the right to bring an advocate with them to court in all proceedings, in addition to having the right to assigned counsel.

6.2.3. Trained parents' advocates (parents who have been through the system and trained to assist other parents) should be used as a support for parents and to help parents understand their rights and responsibilities throughout their child welfare and Family Court cases.

6.2.4. Parents' advocates should be employed in the Parents' Law Office and by the enhanced assigned counsel panel. (These parents' advocates are not meant to be, and should not be, a substitute for adequate legal representation.)

6.2.5. There should be community outreach and education to inform parents of community-based services, preventive services, and legal assistance before initiation of court proceedings.

6.2.6. To the extent possible, parents should be able to access services without fear of triggering a child welfare report or investigation.

6.3. Lawyers:

6.3.1. Any system of legal representation for parents must include access to interdisciplinary resources:

6.3.1.1. Attorneys who represent parents should have access to resources to assist parents with collateral matters such as housing, public benefits, and domestic violence, as they directly affect the issues for which the attorney was initially appointed.

6.3.1.2. In order to accomplish this, staff should include social workers, paralegals, investigators, and parents' advocates with different areas of specialization.

6.3.2. Attorneys should have access to private interview space, adequate research capability, and adequate appellate support.

6.3.3. There should be established standards of practice for representing parents to ensure skilled and zealous advocacy.

6.3.4. Vital to parent representation is out-of-court work, which must be supported through compensation equal to in-court work.

6.3.5. Attorneys must have sufficient time and resources to develop relationships of trust with their clients.

6.3.6. Attorneys or their agents should be involved in foster care agency "service plan reviews," negotiating services with other agencies, case conferences, and other out-of-court settings:

6.3.6.1. The court should recognize the need for attorneys to be freed for out-of-court work.

6.3.7. Attorneys should have space (1) that is easily accessed by clients, including neighborhood-based offices; (2) that is private; (3) with access to translation services; and (4) with access to culturally sensitive services and referral services.

6.3.8. Lawyers have the right and ethical obligation to set appropriate caseload limits.

VII. RECOMMENDATIONS FOR PARENT SELF-ADVOCACY

A. Recommendations

7.1. Require publicly funded child welfare agencies to establish advisory boards, councils, and committees that would encourage the meaningful participation of parents who are served by these agencies. These bodies should strive for diverse viewpoints, including those that are critical and dissenting.

7.2. Child welfare agencies should develop, with extensive parental input, evaluations that allow parents as consumers to participate in the evaluation of services. Parent evaluations should be one of the sources of information used by child welfare agencies in decisions regarding agency performance when making contract renewal decisions.

7.3. Funding should be increased for the development of independent parent self-help and advocacy organizations in all boroughs.

7.4. Utilize and develop already existing contacts in universities that train professionals such as social workers, lawyers, and psychologists, to promote parent involvement in the development of curriculum relating to child welfare services. It is further suggested that parents be consulted with, and involved in, the development of child welfare agency-based training programs and core curriculum.

7.5. The key to effective self-advocacy is access to information. We recommend the solicitation of private and public funding to develop and distribute information and educational materials in key system entry points such as the court or child welfare agency offices. Specific projects include:

7.5.1. Creation of a hotline and companion website comparable to domestic violence hotlines.

7.5.2. Kiosks and racks in prominent places on each floor of the family courts.

7.6. Make child welfare agencies responsible for providing information to parents regarding the rights and responsibilities of parents and the agency, grievance procedures, and available resources, as part of the service they provide to parents.

7.7. Obtain funding and space in the family courts to create independent parent advocacy offices staffed by parents who have been through the system. These parent advocates should be trained and paid to provide support and consultation to parents in need. Parents should control all aspects of this program. These organizations are not intended to replace services, but are meant to

assist the parent in ensuring the accountability of other professionals who are working in the system.

7.8. That Fordham University accept the charge of hosting a more formal coordination (consortium) of parent advocacy organizations. The purpose of this group would be to develop shared goals, projects, and resources (such as already-published materials), and use its collective experience to advocate for system and policy change.

VIII. RECOMMENDATIONS FOR DEALING WITH RACE, GENDER, ETHNICITY, AND CLASS ISSUES

A. *Integrating Race, Gender, Ethnicity, and Class Issues into Child Welfare*

1. Background

Moving from silence to outrage: How and what can we do to bring issues of race, gender, class, and ethnicity to the forefront of discussions on child welfare?

2. Recommendations

8.1. Those who work in the child welfare system (ACS, voluntary foster care agencies, and courts) must begin to look at how issues of race, class, ethnicity, and gender impact decision-making, or any attempt to reform the child welfare system and improve the lives of children and families will continue to fail.

8.2. Those who work in the child welfare system must include honest and genuine discussions of race, class, gender, and ethnicity in all dialogues about reforming and improving the child welfare system.

8.3. Blacks, Latinos, and Asians, who work in the child welfare system, should not bear sole responsibility for raising the issues of race and ethnicity, either in discussions about individual cases and clients or in policy discussions. White people should share in the responsibility of raising issues of discrimination. All who work in the child welfare system should speak out about race, class, and gender discrimination in court and at their agencies and organizations.

8.4. Blacks, Latinos and Asians, who work in the child welfare system should be supported by their organizations to discuss with each other if, and how, racism affects their practice. Those organizations should support similar discussions by whites about if, and how, race and privilege (e.g., the freedom and benefits that come from being in positions of power and not being regularly impacted by racial stereotypes) affect their practice.

8.5. Information should be widely distributed throughout neighborhoods most affected by the issues of racism, poverty, sexism,

and child welfare policies, to educate and help empower the people who live in those communities and the service providers who work with families and children:

8.5.1. City and state government agencies should issue community data profiles which include statistics on: the number of reports of suspected child abuse or maltreatment; the results of investigations of reports of suspected child abuse or maltreatment (e.g., the number of "indicated" and "unfounded" reports);⁸ who gets "indicated," the mother or father or both; the number of children removed from their homes by ACS, with breakdowns by race and ethnicity; the amount of money spent on preventive services in the community; and the amount of money spent on maintaining children in foster care.

8.5.2. City and state governments should provide information on the availability of all types of services within the community (including mental health, substance abuse, early intervention, domestic violence, and preventive services) and the availability of funding for all such services.

8.5.3. Information should be provided at places where parents first enter the child welfare system such as the local family courts and the ACS field offices.

8.5.4. Information should be widely distributed in the community such as through local service providers, community organizers, churches, town hall meetings, leaflets, and brochures.

8.5.5. Information should be written in plain language, and provided in appropriate foreign languages for the community in which the information is distributed.

8.6. Ongoing mandatory training should be provided by each agency/organization in the child welfare system for all players in the system, including, but not limited to, law enforcement, judges, lawyers, social workers, psychologists, medical professionals, and mandatory reporters, on how racial and ethnic stereotypes and sexism can impact decision-making. Training should include research and information on the unique situation created for parents raising children with extremely limited financial and limited local services. Training should include information and discussion on how to distinguish parents struggling because of poverty from parents who are neglecting their children:

8.6.1. Grassroots organizations should be recruited to provide sensitivity training on race, ethnicity, class, and gender.

8. Any report of abuse or maltreatment is "unfounded" until "an investigation determines that some credible evidence of the alleged abuse or maltreatment exists," in which case the report then becomes "indicated." N.Y. Comp. Codes R. & Regs. tit. 18, § 432.1(g), (f) (1995).

8.7. Training must be provided to child welfare professionals on research related to strengths, rather than pathologies, of black and Latino families.

8.8. Stories of families who have been in the child welfare system should be documented and distributed to those who work in the child welfare system. The stories must include the voices of children, mothers, fathers, and workers at local and grassroots organizations who work with families.

B. *Racial Demographics and Child Welfare*

1. Background

According to the 1998 Spring/Summer edition of Child Welfare Watch, ninety-seven percent of the children in foster care in New York City are African-American or Latino, while only three percent are white.⁹ African-American children are more than twice as likely as white children to be taken away from their parents following a confirmed central registry report of abuse or neglect by their parents.¹⁰ Recent ACS statistics indicate that the figures for African-American and Latino children continue to be alarmingly high. Of 4170 children placed in care from July to December 2000, 55% were black, 30% were Hispanic, 4.5% were white, and 10.5% were other races or unknown.¹¹ As of June 1999, of 36,648 children in foster care, 70.4% were black, 24.9% were Hispanic, 3.2% were white, and 1.5% were others.¹²

2. Recommendations

8.9. Those who work in the child welfare system must educate the public on the disproportionate rates of families of color in the system and critically examine the role that racial discrimination plays in this stark imbalance:

8.9.1. Write op-ed articles, letters to editors, and letters to broadcast media, to critically examine whether removal of children from parents accused of neglect does more harm than good and to present alternatives to removal.

9. Andrew White et al., Ctr. for an Urban Future & the N.Y. Forum, *Special Issue: Race, Bias & Power in Child Welfare*, Child Welfare Watch, Spring/Summer 1998, No. 3, at 1.

10. *Id.*

11. N.Y. City Admin. for Children's Servs., *Realizing Reform: ACS Strategic Planning Conference: Using Data to Achieve Continuous Improvements 10* (Mar. 2001).

12. N.Y. City Admin. for Children's Servs., *Reform Plan Indicators: Status Report 2*, at 97 (Mar. 2000).

8.9.2. Use various public awareness campaign tactics such as subway ads to educate the public about how racial, ethnic, gender, and class-based stereotypes can impact child welfare decision-making.

8.10. Advocates in the child welfare system must link with other advocacy groups such as civil rights, welfare advocacy, and women's rights groups, to decode and expose to the public those social welfare policies that are deliberately punitive to low income people of color.

8.11. Advocates in the child welfare community should educate themselves, and where appropriate, support lawsuits and resolutions challenging racial, gender, language, and other forms of discrimination in the child welfare system.

8.12. Fathers have traditionally been excluded from discussions and treatment of families. Those who work in the child welfare system must include fathers when assessing, recommending services, and handling court matters involving families.

8.13. ACS and Family Court should conduct long-term studies to track by race, ethnicity, and socioeconomic origin, children in foster care who have been freed for adoption, and include the following information: whether children are adopted, and after what length of time in foster care; how many children end up back in the Family Court system either via PINS ("persons in need of supervision") or delinquency cases; and how many children are returned to foster care via voluntary placements or involuntary removals.

C. Question for Further Study Raised by the Working Group

1. How might ACS develop relationships with parents and other grassroots organizations without compromising the independence of the parent organizations? Non-ACS funding sources should be developed to support the formation of relationships without compromising the independence of the organizations.

Notes & Observations