

## Journal of Gender, Social Policy & the Law

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Volume 20 | Issue 1

Article 6

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2011

# Integrating Education Advocacy Into Child Welfare Practice: Working Models


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### Recommended Citation

Valverde, Jennifer N. Rosen, Cara Chambers, Megan Blamble Dho, and Regina Schaefer. "Integrating Education Advocacy Into Child Welfare Practice: Working Models." *American University Journal of Gender Social Policy and Law* 20, no. 1 (2011): 201-231.

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# INTEGRATING EDUCATIONAL ADVOCACY INTO CHILD WELFARE PRACTICE: WORKING MODELS

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## INTRODUCTION

Children in foster care experience a higher rate of education-related disabilities and a lower success rate in school than their age-matched peers.<sup>1</sup> The National Survey of Child and Adolescent Well-Being notes that “recurrent physical abuse, emotional abuse, or chronic neglect can lead to difficulties in learning, behavior, and physical and mental health.”<sup>2</sup> Studies examining the link between abuse or neglect and disability have found that 50-75% of children entering foster care have significant behavioral and emotional problems<sup>3</sup> and that children in foster care are between two and three times more likely to have a disability.<sup>4</sup> Moreover, maternal drug or alcohol use during pregnancy significantly increases a child’s chances of having developmental delays, weak cognitive abilities, and long-lasting emotional and behavioral challenges, all of which

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1. See ELISABETH YU ET AL., CHILD WELFARE LEAGUE OF AM., IMPROVING EDUCATIONAL OUTCOMES FOR YOUTH IN CARE: SYMPOSIUM SUMMARY REPORT ix (2002) (providing that children and youth in the child welfare system experience many obstacles in trying to obtain necessary educational services, thus leading youths to repeat grades or drop out of high school); see also Thom Reilly, *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*, 82 CHILD WELFARE 727, 735 (2003) (reporting that 50% of children leave foster care without a high school diploma).

2. See ADMIN. FOR CHILDREN, YOUTH & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING NO. 8: NEED FOR EARLY INTERVENTION SERVICES AMONG INFANTS AND TODDLERS IN CHILD WELFARE 1 (2007), available at [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/reports/need\\_early\\_intervention/early\\_intervention.pdf](http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/need_early_intervention/early_intervention.pdf) (reporting that many of these children qualify for early intervention services because of federal programs designed to expand opportunities for children who would be at risk of having substantial developmental delay if they were not afforded such services).

3. See John Landsverk et al., *Mental Health Services for Children Reported to Child Protective Services*, in THE APSAC HANDBOOK ON CHILD MALTREATMENT 487, 491-92 (John E.B. Myers et al. eds., 2d ed. 2002) (attributing these behavioral and emotional problems to a variety of factors, including the age the child entered the foster care system and the type of care provided).

4. See Andrew J. Baer et al., *Early Intervention and Special Education Advocacy: Challenges in Representing Children, Parents, and the Department of Education*, in PRACTICING LAW INSTITUTE LITIGATION AND ADMINISTRATIVE PRACTICE COURSE HANDBOOK SERIES: CRIMINAL LAW AND URBAN PROBLEMS 97, 110 (2003) (citing YOUTH LAW CTR., CALIFORNIA JUVENILE COURT SPECIAL EDUCATION MANUAL 38 (1994)) (emphasizing the need for child welfare personnel and other individuals in the family court to understand the special needs of children in the child welfare system and how to navigate the special education system).

contribute to poor academic performance.<sup>5</sup>

Children and youth in foster care receive special education services in disproportionate numbers.<sup>6</sup> Nationwide, half of all foster children have substantial delays in cognition, speech, and behavioral development, and some studies have found even higher numbers of foster children in need of early intervention services.<sup>7</sup> As a result, 25-50% of children and youth in out-of-home care in the United States receive special education services at some time during their educational lives,<sup>8</sup> compared to approximately 12% of the general student population.<sup>9</sup>

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5. See Scott D. Azuma & Ira J. Chasnoff, *Outcome of Children Prenatally Exposed to Cocaine and Other Drugs: A Path Analysis of Three-Year Data*, 92 PEDIATRICS 396, 400 (1993) (presenting three-year cognitive and behavioral data on infants exposed to cocaine and other drugs during gestation which concludes that prenatal drug use has significant direct and indirect effects on cognitive functioning and causes other long-term developmental risks); see also Heather Carmichael Olson et al., *Prenatal Exposure to Alcohol and School Problems in Late Childhood: A Longitudinal Prospective Study*, 4 DEV. & PSYCHOPATHOLOGY, 341, 341-59 (1992) (finding that prenatal alcohol exposure has an enduring and predictable relationship with developmental difficulties and poorer school performance in late childhood).

6. See MARK E. COURTNEY ET AL., CHAPIN HALL CTR. FOR CHILDREN AT THE UNIV. OF CHI., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: CONDITIONS OF YOUTH PREPARING TO LEAVE STATE CARE (2004), available at [http://www.chapinhall.org/sites/default/files/CS\\_97.pdf](http://www.chapinhall.org/sites/default/files/CS_97.pdf); CHERYL SMITHGALL ET AL., CHAPIN HALL CTR. FOR CHILDREN, EDUCATIONAL EXPERIENCES OF CHILDREN IN OUT-OF-HOME CARE (2004).

7. See Sheryl Dicker & Elysa Gordon, *Opening the Door to Early Intervention for Abused and Neglected Children; A New CAPTA Requirement*, 23 ABA CHILD L. PRAC., 37, 37 (2004) (noting that nearly 40% of maltreated infants were born prematurely or with low birthweight, and more than 50% have developmental delays or disabilities); see also ADMIN. FOR CHILDREN, YOUTH & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING 4 (2005), available at [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/reports/cps\\_sample/cps\\_report\\_revised\\_090105.pdf](http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/cps_sample/cps_report_revised_090105.pdf) (reporting that “[f]ifty-three percent of all children aged 3 to 24 months whose families were investigated for maltreatment are classified by [The Bayley Infant Neurodevelopmental Screener] as high risk for developmental delay or neurological impairment” and confirming that children involved in the child welfare system “score below the average for the general population of children the same age on physical, cognitive, emotional, and skill-based domains,” regardless of whether they remain at home or are placed in foster care.); ADMIN. FOR CHILDREN, YOUTH & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING: EXECUTIVE SUMMARY 9 (2003), available at [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/reports/exesum\\_nscaw/exesum\\_nscaw.pdf](http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/exesum_nscaw/exesum_nscaw.pdf) (“The vast majority of children who have spent one year in out-of-home-care have substantial social and cognitive impairments.”).

8. See, e.g., CLAIRE VAN WINGERDEN ET AL., EDUCATION ISSUE BRIEF: IMPROVING SPECIAL EDUCATION FOR CHILDREN WITH DISABILITIES IN FOSTER CARE 1 (2002), available at [http://64.78.47.133/training/upload/fosterclub\\_219.pdf](http://64.78.47.133/training/upload/fosterclub_219.pdf) (noting that 30-40% of the 500,000 children in foster care are in special education); COURTNEY ET AL., *supra* note 6, at 40 tbl. 37 (noting that 47% of students in foster care surveyed in three Midwest states had at one time been placed in special education classes); SMITHGALL ET AL., *supra* note 6, at 58, 60 tbl. 16 (showing that 45% of students in sixth through eighth grade who were in foster care in Chicago were classified as in need of special education services).

9. See OFF. OF SPECIAL EDUC. & REHAB. SERVS., U.S. DEP'T OF EDUC., TWENTY-

Despite these alarming statistics, the educational needs of children in foster care often go unaddressed.<sup>10</sup> Since life in foster care frequently is characterized by recurring crises, caseworkers and caregivers often fail to prioritize a child's educational needs.<sup>11</sup> Frequent placement disruptions and the resultant lack of school stability experienced by children in care may interrupt special education service delivery, and/or prevent these children from being properly evaluated and found eligible for special education.<sup>12</sup> Many of the parties responsible for the care of foster children have insufficient knowledge of the vast array of laws, regulations, and local procedures governing the provision of special education services to children and the procedures for accessing critically needed early intervention and special education services.<sup>13</sup>

Further compounding these issues is the special education system's reliance on "parents"<sup>14</sup> to assert and protect their children's rights under

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FIFTH ANNUAL REPORT TO CONGRESS ON THE IMPLEMENTATION OF THE INDIVIDUALS WITH DISABILITIES ACT 21 (2003) (noting that based on public school enrollment, 12.1% of students received special education and related services in 2001).

10. See VAN WINGERDEN ET AL., *supra* note 8.

11. See MARNI FINKELSTEIN ET AL., VERA INST. OF JUSTICE, WHAT KEEPS CHILDREN IN FOSTER CARE FROM SUCCEEDING IN SCHOOL?: VIEWS OF EARLY ADOLESCENTS AND THE ADULTS IN THEIR LIVES 46 (2002), available at [http://www.vera.org/publication\\_pdf/169\\_280.pdf](http://www.vera.org/publication_pdf/169_280.pdf) (reporting that results from its 2002 study indicate that foster parents and caseworkers frequently suggest responsibility for monitoring academics should reside with someone other than themselves).

12. See MASON BURLEY & MINA HALPERN, WASH. STATE INST. FOR PUB. POLICY, EDUCATIONAL ATTAINMENT OF FOSTER YOUTH: ACHIEVEMENT AND GRADUATION OUTCOMES FOR CHILDREN IN STATE CARE 3 (2001), available at <http://www.wsipp.wa.gov/rptfiles/FCEDReport.pdf> (noting that educational problems can be particularly challenging for school staff to recognize when foster children move from school to school or district to district); see also *id.* at 9 (quoting ELIZABETH CALVIN ET AL., TEAM CHILD & CASEY FAMILY PROGRAMS, MAKE A DIFFERENCE IN A CHILD'S LIFE: A MANUAL FOR HELPING CHILDREN AND YOUTH GET WHAT THEY NEED IN SCHOOL I (rev. ed. 2008) ("[W]hen students change schools they lose an average of four to six months of educational progress.")).

13. See generally Dennis E. Cichon, *Encouraging a Culture of Caring for Children with Disabilities*, 25 J. LEGAL MED. 39, 55 (2004) (explaining that youth in the child welfare system often do not receive necessary services because they are placed with foster parents who are unaware of the youth's needs and lack the requisite training to recognize and manage emotional and behavioral disorders).

14. The Individuals with Disabilities Education Improvement Act, which is the federal law governing special education, defines "parent" as:

a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or except as used in sections 1415(b)(2) and 1439(a)(5), an individual assigned under either of those sections to be a surrogate parent.

20 U.S.C. § 1401(23) (2006). Federal special education regulations further clarify that unless a "judicial decree or other order identifies a specific person or persons . . . to act as the child's 'parent' or to make educational decisions on behalf of a child," then the biological or adoptive parent, when "attempting to act as the parent," is presumed to be

relevant statutes. Many children involved in child protection cases do not have a stable, knowledgeable parent who is capable of securing needed services. Alternatively, some children in foster care do have an involved parent, but the parent may be excluded illegally from participating in the special education evaluation and placement process because the school district wrongly permits the foster parent or caseworker to serve as the child's educational decision-maker instead. Moreover, children lacking a responsible adult willing to advocate for their educational needs are further disadvantaged because the local education agency and/or the court often fails to exercise its legal authority to appoint a surrogate parent to protect the child's interests. As a result, many children go without the educational services they need to succeed,<sup>15</sup> and fall even further behind until they eventually give up and drop out of school.

To address these concerns, specialized programs have developed across the country to provide special education advocacy to children in foster care.<sup>16</sup> This Article presents an overview of four special education advocacy programs that have emerged over the last decade and target children in foster care: The Legal Aid Society's Kathryn A. McDonald Education Advocacy Project in New York City; the Administration for Children's Services Education Unit in New York City; the Children's Law Center's Guardian *ad Litem* (GAL) Special Education Project in Washington, D.C.; and, the Rutgers Law School—Newark Special Education Clinic's Special Education in the Courts Initiative in Newark, New Jersey.<sup>17</sup> All of these programs aspire to the same goal: improving the educational outcomes for children in foster care; however, at times, their approaches differ.

The co-authors of this Article represent each of the four programs described herein. The Article highlights the need for, and benefits of,

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the parent for special education purposes unless she or he "does not have legal authority to make educational decisions for the child." 34 C.F.R. § 300.30(b) (2010).

15. See ADMIN. FOR CHILDREN, YOUTH & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL-BEING RESEARCH, NO. 3: CHILDREN'S COGNITIVE AND SOCIOEMOTIONAL DEVELOPMENT AND THEIR RECEIPT OF SPECIAL EDUCATION AND MENTAL HEALTH SERVICES 3-4 (2008), available at [http://acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/reports/spec\\_education/spec\\_education.pdf](http://acf.hhs.gov/programs/opre/abuse_neglect/nscaw/reports/spec_education/spec_education.pdf) (showing that the number of students receiving mental health and special educational services are lower than the level of need indicated through assessments).

16. See, e.g., *Children's Services Education Unit*, NYC.GOV, <http://www.nyc.gov/html/acs/education/home.html> (last visited Sept. 27, 2011); *Juvenile Rights Practice*, LEGAL AID SOC'Y, <http://www.legal-aid.org/en/juvenilerights/juvenilepractice.aspx> (last visited Sept. 27, 2011); *Special Education Clinic*, RUTGERS SCHOOL OF LAW—NEWARK, <http://law.newark.rutgers.edu/clinics/special-education-clinic> (last visited Sept. 27, 2011); *Who Are We*, CHILDREN'S LAW CTR., <http://www.childrenslawcenter.org/who-we-are> (last visited Sept. 27, 2011).

17. See *infra* Part II.

programs addressing this issue, details their diversity, and shares the obstacles faced and lessons learned in their development and implementation. The Article begins with a description of each program including its origin, structure, staffing, and funding.<sup>18</sup> Parts III, IV, and V then compare and contrast the programs' training efforts, direct services, and policy work.<sup>19</sup> The Article concludes with a discussion of some common challenges faced by these advocacy programs, their efforts to measure outcomes, and the lessons learned.<sup>20</sup> It is hoped that readers will benefit from the authors' experiences and that this information will assist in the development of future programs that address the educational needs of children in foster care.

## I. THE PROGRAMS

### *A. The Legal Aid Society's Kathryn A. McDonald Education Advocacy Project, New York City, N.Y.*

The Legal Aid Society's Juvenile Rights Practice serves as the attorney for more than 30,000 children involved in child protective proceedings in New York City.<sup>21</sup> Legal Aid's role is to serve as the child's lawyer, not as a Guardian *ad Litem*.<sup>22</sup> Thus, Legal Aid provides direct representation to its child clients and does not substitute judgment for the client unless the client is too young or impaired to express an opinion about the course of his or her case.<sup>23</sup> Like most attorneys for children in child protection matters, Legal Aid attorneys carry heavy caseloads and spend most of their time in family court presenting the child's position in cases involving

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18. *See id.*

19. *See infra* Parts III-V.

20. *See infra* Parts V-VIII.

21. *See* LEGAL AID SOC'Y, THE LEGAL AID SOCIETY 2010 FACT SHEET 1 (2010), available at <http://www.legal-aid.org/media/132270/2010%20fact%20sheet-2-4.pdf> (noting that the Legal Aid Society annually represents children in child protective, termination of parental rights, persons in need of supervision, and juvenile delinquency cases).

22. *See* LEGAL AID SOC'Y, THE LEGAL AID SOCIETY 2010 ANNUAL REPORT 23 (2010) [hereinafter LEGAL AID REPORT], available at [http://www.legal-aid.org/media/140218/las\\_2010\\_annualreport.pdf](http://www.legal-aid.org/media/140218/las_2010_annualreport.pdf). Typically, a Guardian *ad Litem*'s role is to advocate for a child's "best interests." Legal Aid, *Giving the Children a Meaningful Voice: The Role of the Child's Lawyer in Child Protective, Permanency and Termination of Parental Rights Proceedings* at 2 (Oct. 2008), [http://www.legal-aid.org/media/68451/role\\_of\\_jrp\\_lawyer\\_10-08.pdf](http://www.legal-aid.org/media/68451/role_of_jrp_lawyer_10-08.pdf) [hereinafter Legal Aid, *Giving the Children*]. A Guardian *ad Litem* makes an independent assessment regarding what is in the child's best interests and is not bound by the child's opinion or wishes; thus, a Guardian *ad Litem*'s recommendations may differ from the wishes of the child. *Id.* at 13.

23. *See* Legal Aid, *Giving the Children*, *supra* note 22, at 10-13 (providing that a lawyer's role is to educate the child to make informed decisions regarding his or her case and to remind the child that the lawyer is meant to help the child achieve his or her wishes while protecting his or her legal interests).

abuse, neglect, and termination of parental rights.<sup>24</sup> Historically, Legal Aid has had neither the time nor the expertise necessary to secure specialized education services for their clients.

To address the high number of abused and neglected children struggling with educational deficits and disabilities, Legal Aid established the Kathryn A. McDonald Education Advocacy Project (EAP) in 2001.<sup>25</sup> EAP is housed within Legal Aid's Juvenile Rights Practice and provides early intervention and special education advocacy to children with disabilities who are involved in the child welfare system.<sup>26</sup> EAP also offers information and advice on general education issues affecting the child welfare population.<sup>27</sup> Legal Aid is appointed by the family court to represent the child in abuse and neglect cases; therefore, EAP represents the child with respect to his or her educational issues.<sup>28</sup>

EAP's program has four components. First, EAP provides direct client advocacy to ensure that children with disabilities who are involved in abuse and neglect proceedings receive critical educational and developmental services. This includes, assessing the appropriateness of children's special education programs, negotiating with the state and school district to obtain meaningful Individualized Family Service Plans or Individualized Education Programs (IEP), and working to secure new placements and additional services, sometimes through private schools or providers. When necessary, EAP represents its child clients at mediations and impartial due process hearings against the Department of Health or the Department of Education to secure appropriate developmental and educational services.

Second, EAP provides brief consultation services to Legal Aid attorneys and others on a wide range of general education issues affecting children who are involved in abuse and neglect proceedings. EAP offers information and guidance regarding enrollment and registration, compulsory school laws, school transfers, school discipline, homeless student rights, promotion and graduation requirements, and other issues.

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24. See LEGAL AID REPORT, *supra* note 22, at 23, 35-38 (outlining a typical day of several Legal Aid practitioners).

25. See *10th Anniversary Celebration of Kathryn A. McDonald Education Advocacy Project on April 6*, LEGAL AID SOC'Y, <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/10thanniversarycelebrationofkathryn amcdonaldeducationadvocacyprojectonapril6.aspx> (last visited Sept. 27, 2011) [hereinafter *10th Anniversary Celebration*] (noting that in addition to providing direct-advocacy services to abused and neglected children, EAP also engages in systemic reform to protect and define the special education rights of children in foster care).

26. See LEGAL AID REPORT, *supra* note 22, at 25; *10th Anniversary Celebration*, *supra* note 25.

27. See LEGAL AID REPORT, *supra* note 22, at 25; *10th Anniversary Celebration*, *supra* note 25.

28. See *generally Juvenile Rights Practice*, *supra* note 16 (noting that EAP specializes in cases requiring educational advocacy).



Third, EAP provides training to educate parents, foster parents, foster care caseworkers, attorneys, and other parties on how to access early intervention and special education services for children involved in abuse and neglect proceedings.

Fourth, EAP collaborates with other key players in the child welfare, health, and education systems and engages in systemic advocacy to define and protect the special education rights of children in foster care.

During the past nine years, EAP has provided early intervention and special education advocacy services to over 2,300 abused and neglected children, and trained over 3,900 parents, foster parents, and child welfare professionals. Furthermore, by collaborating with public agencies and engaging in systemic advocacy, EAP has succeeded in effecting changes to policies, laws, and regulations that affect the delivery of special education services to children in foster care.

EAP's staff includes one supervising attorney, two full-time attorneys, one part-time attorney, and one social worker. Staff members are based in Legal Aid's borough offices and work alongside the Legal Aid attorneys who represent children in the abuse and neglect proceedings. The majority of EAP's referrals come from the Legal Aid attorneys who represent children in the underlying abuse or neglect cases. Thus, EAP can reach clients whose parents or caregivers have been unable or unwilling to obtain help through other channels. Most of the funding for EAP comes from private foundations and individual donors.

#### *B. The Administration for Children's Services Education Unit, New York City*

The continued success of the EAP did not go unnoticed in New York City, particularly by the Administration for Children's Services (ACS), which is the governmental agency responsible for protecting children and strengthening families in New York City.<sup>29</sup> ACS investigates all allegations of abuse and neglect reported to the State's Central Registry or hotline.<sup>30</sup> In addition, in family court proceedings, Family Court Legal Services (FCLS), the ACS attorney division, represents the Commissioner of Child Welfare and works to protect the health, safety, and well-being of

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29. See generally N.Y. CITY ADMIN. FOR CHILDREN'S SERVS., NEW YORK CITY'S CHILD WELFARE COMMUNITY'S COMMITMENT TO QUALITY PRACTICE 1-2 (2009), available at [http://www.nyc.gov/html/acs/downloads/pdf/quality\\_practice\\_model.pdf](http://www.nyc.gov/html/acs/downloads/pdf/quality_practice_model.pdf) (stating that the organization's core values include protecting children from abuse and neglect and ensuring that children achieve their developmental potential).

30. See N.Y. CITY ADMIN. FOR CHILDREN'S SERVS., SAFETY FIRST BROCHURE, available at [http://www.nyc.gov/html/acs/downloads/pdf/safety\\_first\\_brochure.pdf](http://www.nyc.gov/html/acs/downloads/pdf/safety_first_brochure.pdf) (creating a special hotline for mandated reporters such as hospitals, schools, and childcare providers to answer questions related to open child protective investigations).

all children.<sup>31</sup> Recognizing the importance of reversing the trend of poor educational outcomes for children in foster care, ACS created an education unit, with both an attorney director and a social work director, to directly address the issue from within the agency responsible for these children.<sup>32</sup> Accordingly, in 2005, the Children's Services Education Unit (CSEU) of ACS commenced operations.

CSEU was created to provide direct advocacy services to children in foster care and consultation to child protection staff and partner agencies in the areas of early intervention and special education.<sup>33</sup> The role and configuration of CSEU have evolved over time, particularly in terms of scope, and CSEU now addresses general education as well as special education issues. CSEU staffing includes three bachelor's level education advocates; two attorneys specializing in education law; and one director, who holds a Master's Degree in Social Work and has extensive experience providing education advocacy services to children in the foster care system. CSEU staff work in conjunction with FCLS attorneys to advocate on behalf of, and secure appropriate educational services for, children in foster care. CSEU reports directly to the Office of the Commissioner of Child Welfare and interfaces with all areas of the child welfare system. The project has received financial support from the city and state governments as well as private foundations.

Currently there are two components to CSEU's model: the *on-site services model* and the *education advocacy model*. The *on-site services model* places an attorney on-site at a partnering foster care agency two days per week. The on-site attorney provides direct educational advocacy services to children in foster care to ensure that they receive appropriate special education services. Unlike EAP, which advocates for the child's wishes, CSEU advocates on behalf of the child's best interest.

On-site services range from making school and home visits, to participating in meetings regarding a child's education, to helping draft

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31. See *Mission & Organization*, NYC.Gov, <http://www.nyc.gov/html/acs/html/about/mission.shtml> (last visited Sept. 27, 2011) (pledging to provide client children with the support necessary to achieve their "full educational and developmental potential").

32. See *Children's Services Education Unit*, *supra* note 16 (recognizing that CSEU provides consultation and advocacy services to child welfare professionals when education issues are present and provides training to children's services staff, partner agencies, and foster parents to enhance their ability to identify children who require early intervention or special education services).

33. See *id.* (asserting that CSEU focuses on cases where (1) children require referrals for early intervention and special education services but are having difficulty in obtaining such referrals; (2) children require early intervention and special education services but are not receiving such services; and (3) children are not placed in the appropriate program and need additional services or a change in educational placement).

appropriate early intervention and special education service plans for children. The on-site attorney also provides consultation services to case planners employed by the foster care agency and foster parents working with the foster care agency in situations in which these individuals encounter difficulty with the education system. Consultations include helping a staff member read and interpret children's educational records, determining who may provide written consent for the evaluation of a child in foster care, and sharing information on a wide range of general education issues such as school enrollment, transfers, discipline, suspensions, and promotion. The on-site attorney also works to build the capacity of the foster care agency staff by developing their knowledge base so that they are more capable of resolving school-related issues without outside assistance.

Capacity building among child welfare professionals is the primary goal of CSEU's second component, the *education advocacy model*. Whereas the *on-site services model* focuses on meeting the needs of children in foster care, the *education advocacy model* aims to meet the needs of child protection staff so that they are better equipped with the knowledge and tools required to ensure appropriate educational placements, programs, and stability for children in the child welfare system. In addition to providing information through citywide training, CSEU maintains an educational resources webpage that is linked to ACS's main website.<sup>34</sup> The webpage offers user-friendly information on special education and general education laws, processes, rights and responsibilities, as well as sample letters for use by child welfare staff to assist them in advocating for children under ACS care and custody.<sup>35</sup>

*C. The Children's Law Center's GAL Special Education Project, Washington, D.C.*

"Founded in 1996, Children's Law Center (CLC) is the largest legal services organization in the District of Columbia and the only one that provides comprehensive legal representation on behalf of children."<sup>36</sup> CLC's largest unit is its Guardian *ad Litem* (GAL) program, which provides legal representation to more than 500 children in the child welfare system each year.<sup>37</sup> In contrast to the direct representation model used by

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34. See *Welcome to Education Resources*, NYC.GOV, <http://home2.nyc.gov/html/acs/education/> (last visited Sept. 27, 2011) (providing general information regarding education issues and access to resources, program information, service availability, and helpful links).

35. *Id.* (offering resources including template letters to request an evaluation or an Individualized Education Program (IEP) meeting).

36. *Who Are We*, *supra* note 16.

37. *Help Children in Foster Care*, CHILDREN'S LAW CTR., <http://www.childrenslawcenter.org/what-we-do/help-children-foster-care>.

attorneys for children in New York State described above, D.C.'s GAL advocates for each child's best interest<sup>38</sup> and ensures that the child client's individualized physical, emotional, and educational needs are identified and addressed. While the GAL performs his or her advocacy role primarily in family court proceedings, he or she also may advocate for child clients outside of court with respect to medical, educational, and other issues.<sup>39</sup>

In recognition of the overwhelming number of GAL clients with disabilities and unmet educational needs, CLC created the GAL Special Education Project (CLC-SEP) in 2006. The CLC-SEP began as a pilot project with two part-time attorneys providing targeted educational advocacy to the organization's most at-risk clients and their families. Since the pilot project's inception, CLC-SEP has increased its staff to one supervising attorney and four full-time education attorneys. The project's development and growth was made possible by funding from the D.C. court system to enhance the quality of representation for D.C.'s foster youth.

CLC-SEP's primary purpose is to provide legal representation to assist CLC's clients with educational issues that impede their social and academic progress and stability. To that end, CLC-SEP focuses its legal effort on special education and school disciplinary matters; however, staff also provide general education advocacy as needed to maintain a child's school stability and enrollment. CLC-SEP's legal advocacy includes representation at school meetings, due process hearings, and student disciplinary conferences, hearings, and re-entry meetings. Additionally, CLC-SEP attorneys attend and participate in all hearings concerning the child welfare matter in order to update the court on the child's educational status.

CLC-SEP provides brief consultation and advice to CLC's staff and other D.C. child welfare practitioners to assist them in issue-spotting and addressing the educational needs of their child and adolescent clients. Similar to New York's EAP, CLC-SEP also provides training and technical assistance on general and special education law and procedures to various constituent groups in the local child welfare community, and engages in systemic advocacy to improve the educational services and protections offered to children and youth in the child welfare system.

Although CLC represents children in child protection matters, CLC-

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38. See SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CHILD ABUSE AND NEGLECT ATTORNEY PRACTICE STANDARDS 10 (2003), available at [www.dccourts.gov/dccourts/docs/practice\\_standards.pdf](http://www.dccourts.gov/dccourts/docs/practice_standards.pdf) (describing that the role of the guardian *ad litem* is to advocate for the child's safety, well being and best interests).

39. See *Help Children in Foster Care*, *supra* note 37 (noting that the GAL advocates for their child client in and out of court with judges, social workers, school and medical professionals).

SEP's clients are most often the parents, foster parents, or surrogate parents of children who are existing clients of CLC and have, or are suspected of having, a disability that has an adverse effect on their education. Occasionally, CLC-SEP directly represents a GAL client when the youth is eighteen years of age or older and no conflict exists with the GAL representation. Clients are referred to CLC-SEP through an internal referral process or by court appointment; however, due to funding constraints, CLC-SEP attorneys, presently, are only available to provide representation in cases where CLC is acting as the child's GAL.<sup>40</sup> Internal referrals come from CLC-GAL attorneys who represent children in child welfare cases. When a judge seeks to have the CLC-SEP assigned to a case, typically, the judge's clerk contacts CLC-SEP to confirm that an education attorney is available for appointment. The judge then issues an order appointing a specific CLC-SEP attorney to represent the parent or other adult who holds the right to make educational decisions on behalf of the child.

*D. The Rutgers Law School—Newark Special Education Clinic's Special Education in the Courts Initiative, Newark, N.J.*

The Special Education Clinic at the Rutgers University School of Law—Newark (SEC) was created in 1995 with a grant from the New Jersey State Bar Foundation to address the critical shortage of free legal assistance available for New Jersey parents and caregivers of children with disabilities in special education matters.<sup>41</sup> The SEC's mission is threefold: to provide legal advice and representation to low-income parents of children with disabilities as well as adult students (ages eighteen to twenty-one); to engage in community outreach and training efforts; and to educate law students in the area of special education law and lawyering skills. In all cases, the SEC represents the "parent,"<sup>42</sup> on behalf of the student in special education matters, unless the student is eighteen or older, in which case the adult student becomes the SEC's client.

The SEC is comprised of the Director and one Staff Attorney, both of

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40. Fortunately, the D.C. Family Court has a select panel of qualified and trained education attorneys available for appointment in cases where CLC is not serving as the GAL. See SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT ATTORNEY PRACTICE STANDARDS FOR SPECIAL EDUCATION PANEL ATTORNEYS 5, 19 (2009), available at <http://www.dccourts.gov/dccourts/docs/09-03Attachment.pdf> (noting that attorneys handling family court matters must be well-trained and informed about the procedural and substantive law and aware of psycho-social issues affecting their clients).

41. *Special Education Clinic*, *supra* note 16 (noting that clinic law students represent and advocate for parents and caregivers who are seeking to obtain early intervention and educational services and educate parents and others involved in the lives of children with disabilities about their legal rights and responsibilities).

42. See *supra* note 14.

whom are Clinical Professors of Law and New Jersey licensed attorneys; twelve to eighteen second and third-year law students per semester, who each work on special education cases and projects under attorney supervision; and one to two Master's level social work students working under the supervision of the Staff Attorney, who also holds a Master Degree in Social Work. Funding for the SEC is a mix of soft, quasi-soft, and hard money, and its operating expenses are paid for with fees and costs received when the SEC prevails in litigation.

While the SEC accepts all types of special education cases, provided a family meets intake and income eligibility guidelines, in the early 2000s, it began outreach efforts specifically targeting children with disabilities in foster care after recognizing that this was a class of children routinely denied proper educational services. The SEC's work in this area has evolved over time. Initially, the SEC targeted parents, foster parents, and relative caregivers for a "Special Education in the Courts" Initiative, a series of Special Education 101 training workshops. The workshops were not as well-attended as hoped, so after six months, the SEC decided to pursue a new audience for training, specifically, professionals in the family court system working with, and/or on behalf of, children in foster care. With grant funding from the New Jersey Children in Court Improvement Committee,<sup>43</sup> the SEC embarked on a two-year effort to train child welfare professionals statewide about the special education rights of children in foster care. The SEC developed an extensive training curriculum and resource manual, and over the next two years, it conducted two-hour training workshops in each New Jersey county family court.

Upon completing the two-year statewide training initiative, the SEC developed its third foster care initiative—a pilot project to meet the developmental and educational needs of children with disabilities in foster care in partnership with the Office of the Public Defender Law Guardian Division in Essex County (OPD-Essex). OPD-Essex serves as the law guardian or attorney for children in child welfare proceedings. Law guardians in New Jersey represent the wishes of their child clients and do not substitute judgment unless a child is too young or impaired to express his or her opinion.<sup>44</sup> Through the pilot project, the SEC provided legal assistance to "parents" of children with special needs in foster care who were clients of OPD-Essex; gave information and advice to OPD-Essex staff on overcoming some of the typical educational problems children in

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43. The grant provided two-fifths of the SEC Staff Attorney's yearly salary.

44. See *OPD Law Guardian Unit*, N.J. OFFICE OF THE PUB. DEFENDER, [http://www.state.nj.us/defender/div\\_lawguardian.shtml](http://www.state.nj.us/defender/div_lawguardian.shtml) (last visited Sept. 27, 2011) (stating that the law guardian helps the child client understand his or her legal rights and the court processes while also informing the child about the most realistic course of action to protect the child's safety and to promote the child's wishes and interests).

foster care face, such as how to register a child for school, transfer school records, or refer a child for an initial special education evaluation; held monthly meetings with OPD-Essex Law Guardians and investigators to provide a forum for discussing and problem-solving client-specific special education concerns; and offered continuing education and materials to OPD-Essex staff on special education and early intervention law and process. Although the pilot project has formally ended, the SEC continues to provide information and guidance to law guardians and others in the OPD-Essex office by phone and undertakes representation of cases referred by the OPD-Essex office when legal issues require the assistance of an attorney specialized in special education law.

Legal advocacy provided by the SEC ranges from representation at IEP meetings to mediations, due process hearings, and federal court proceedings. At the request of a child's law guardian, and with the permission of the child's parent, the SEC also reports to the family court on the child's educational needs and status. In addition to direct legal advocacy, the SEC continues to train parents, caregivers, and professionals working with, or on behalf of, children in foster care across the state on early intervention and special education law, as well as the intersection of, and cross-systems advocacy within, the early intervention, special education, and child welfare systems.

## II. TRAINING

Each of the programs provides training for staff within its own organization and/or for other players involved with, or working in, the child welfare system, including judges, child welfare case workers, children's attorneys, and Court-Appointed Special Advocates (CASA). Common training topics include early intervention; preschool special education; school-age special education; defining the "parent"/education decision-maker in special education matters; consent and surrogacy issues for children in foster care; general education issues (e.g., registration and enrollment, credit transfers, homeless student rights, promotion and graduation requirements); judicial intervention in educational issues; and cross-systems educational advocacy. As part of their training efforts, all of the programs have developed resource materials on which various audiences may rely to integrate education into their child welfare practice. For example, the SEC developed and distributed a checklist of ten questions for family court judges to ask during permanency planning and other routine hearings. This checklist was meant to remind judges to inquire about the educational needs of children in court. CLC-SEP also assisted in the development of an education checklist for family court judges, attorneys, and social workers to use in neglect hearings to ensure

that they focus their attention on the child's educational status and needs. Similarly, CSEU developed resources for FCLS and foster care agency staff that offer guidance on consent and surrogacy in special education decision-making. EAP, CSEU, and the SEC also maintain public websites that contain information and resource materials on numerous general education and special education topics.

With respect to the substance of training workshops for various players in the child welfare system, the projects have debated the relative merits of breadth versus depth, struggling with questions of how much substance to provide in the training and where to draw the fine line between just enough training and information overload. While one-time trainings across multiple agencies and geographic zones are helpful in promoting wide dissemination of basic information, all of the projects have found that repetitive and/or multi-part trainings are more likely to aid participants to develop a nuanced understanding of the issues and to integrate the lessons into their own practice. For example, one of the SEC's early strategies was to provide a two-hour overview of special education and early intervention law and process in each New Jersey county family court over the course of two years. In retrospect, the training likely offered too much information at once, and time might have been better spent focusing exclusively on common obstacles to obtaining appropriate early intervention and special education services and offering advice on how to surmount these obstacles. After completing the broader, state-wide training initiative, the SEC revised its approach to provide multiple trainings to specific providers, such as the OPD-Essex Law Guardian Division and CASA workers in certain New Jersey counties. This revised approach has allowed the SEC to offer more frequent, multi-part training sessions on a variety of topics and has provided the opportunity to delve into more depth on certain topics.

CSEU takes ongoing training still further. Within ACS, CSEU primarily targets the child welfare managerial staff for regular trainings so as to avoid problems resulting from high staff turnover. CSEU also trains ACS legal staff twice a year in every borough legal office. These sessions are mandatory and continuing legal education credits are offered to all participants. In addition to trainings, CSEU hosts monthly meetings/informational sessions for foster care agency personnel to support their efforts to improve educational outcomes for children in foster care. These "Education Forums" provide foster care agency personnel the opportunity to interface directly with New York City Department of Education (NYC DOE) staff and learn more about NYC DOE programs. The Education Forums also offer participants the chance to troubleshoot challenging education issues presented by their cases directly with NYC DOE and CSEU staff, as well as with each other, thus creating a collegial and mutually supportive atmosphere.



CLC-SEP takes yet a different approach. It collaborates with other legal service providers, such as the D.C. Public Defender Service, to offer an annual, multi-day overview of special education law and practice to newly paneled child welfare practitioners and education attorneys in D.C. The introductory sessions are followed up with periodic one to two hour brown-bag training sessions. The brown-bag sessions serve to supplement the introductory topics by covering more advanced education law topics as well as practice tips.

At various times, each project also has targeted parents, relative caregivers, and foster parents for training. These trainings have empowered parents, and those acting in place of parents, to become more informed and confident advocates for their children's education. For example, CLC-SEP collaborated with D.C.'s State Education Agency, the Office of the State Superintendent of Education, to develop a training module that outlines the rights and responsibilities of surrogate parents<sup>45</sup> in making educational decisions on behalf of children with, or suspected of having, disabilities. Despite the staggering statistics linking abuse/neglect, disability, and special education, detailed training on special education and early intervention is not a mandatory component of either foster parent training or child welfare caseworker training in any of the project host states.

Some of the projects also have targeted their respective school systems for training. School personnel often are confused about who is permitted to consent for special education evaluations and services when a child is in foster care. EAP and CSEU have worked with their local school districts to provide guidance on this issue. For example, EAP and CSEU helped draft the section on consent for NYC DOE's Standard Operating Procedures Manual, and will be helping the NYC DOE train supervisory staff on the proper procedures for obtaining parental consent for children in foster care. The SEC has not provided a similar service to local school districts since each of the more than 590 school districts in New Jersey typically is represented by private or board counsel, and "parent" attorneys usually are not permitted to interface directly—without the presence of private or board counsel—with school district personnel.

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45. The Individuals with Disabilities Education Act (IDEA) and corresponding federal regulations require that school districts assign an individual to act as a surrogate parent for a child whenever the child's "parent" cannot be identified or located, the child is a ward of the state, or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act. 20 U.S.C. § 1415(b)(2)(A) (2006); *see also* 34 C.F.R. § 300.519(a)-(b) (2011). A judge overseeing the care of a child who is a ward of the state also may appoint a surrogate parent. 20 U.S.C. § 1415(b)(2)(A)(i).

### III. DIRECT SERVICES

#### A. Defining the Client

While each project described in this Article provides special education advocacy in accordance with state and federal special education law and regulations, their definition of the “client” varies.<sup>46</sup> In both the SEC and CLC-SEP, whoever serves in the role of the “parent” under the Individuals with Disabilities Education Improvement Act (IDEA), whether the birth parent, foster parent, or surrogate parent, is the education decision-maker and client, and is the person with whom the education advocate has primary contact. For the SEC, an organization that is independent of the child welfare system and one that accepts whatever cases “walk in the door” as opposed to only those that are child welfare involved, this is an easy and straightforward position to take. Typically, when the SEC receives a case referral from the state child welfare agency, the Office of the Law Guardian, a CASA, or other child welfare-related professional, it obtains confirmation that the person acting as the “parent” for IDEA purposes has the right to serve in that role (e.g., Court Order) before accepting the case for legal representation. The SEC takes this step to ensure that the authority of biological and adoptive parents to make educational decisions for their children is not usurped without due process.

For a program such as CLC-SEP, the issue is not so clear-cut. Although CLC serves as the GAL for children in child welfare cases, CLC-SEP also serves as attorney for parents in special education cases. To permit CLC’s dual representation of the child and the “parent,” and in an effort to avoid client conflicts, CLC developed a carefully worded legal assistance agreement, which describes the existence and nature of the possible conflict and potential adverse consequences of the representation.<sup>47</sup> The agreement discloses the limitations of CLC’s representation of the “parent” in the education case as a result of its pre-existing role as GAL, including the waiver of confidentiality in the attorney-client relationship. It also details

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46. Numerous authors have pondered the question of “who is the client” in special education matters. See, e.g., Yael Zakai Cannon, *Who’s The Boss?: The Need for Thoughtful Identification of the Client(s) in Special Education Cases*, 20 AM. U. J. GENDER SOC. POL’Y & L. 1 (2011). As a result, the authors of this Article have chosen not to engage in a discussion as to whether the law permits representation of the child, the parent or both in special education issues; instead, this Section discusses how the four projects define the client and, below, the challenges resulting from these definitions.

47. In D.C., a lawyer may represent a client where a conflict of interest may arise if “[e]ach potentially affected client provides informed consent to such representation after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation; and [t]he lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.” D.C. RULES OF PROF’L RESPONSIBILITY R. 1.7(c) (amended 2007).

CLC's need to withdraw from representation as the GAL and as attorney for the "parent" in the education case should a conflict arise between the GAL and parent regarding the child's educational interests or any other issue in the abuse/neglect matter. The agreement also informs the potential client of the right to seek outside counsel in the education matter, if they so choose, in order to avoid the placement of any limitations on representation. If the prospective client is the child's biological parent or any other party to the neglect matter who is already represented by legal counsel, the CLC-SEP attorney sends a copy of the legal assistance agreement to the prospective client's counsel before any further action is taken to secure the education representation. This step ensures that the prospective client has the opportunity to get the advice of counsel in determining whether to accept the terms of CLC-SEP representation.

In contrast to the SEC's and CLC-SEP's representation of the parent in special education matters, EAP views the child or youth as the client and advocates for what the child or youth wants educationally. EAP does not substitute judgment for its clients with respect to their educational wishes unless a child is too young or too impaired to express his or her wishes or an opinion about the course of the case. With permission from the attorney representing the child's parent or education decision-maker, EAP interviews and gathers supporting information from the parent and uses this information to develop a case plan that is consistent with the child's wishes. This structure allows EAP to avoid potential conflicts that could arise if it were to undertake dual representation of the parent and child.

CSEU takes yet a different approach. Like EAP, CSEU gathers information from the child's "parent"—with permission from the parent's attorney—and engages the child in the discussion about his or her education. However, CSEU then uses this information to advocate for what it believes is in the best educational interest of the child. CSEU does not engage either the "parent" or the child in a formal attorney-client relationship. Instead, CSEU serves as a knowledgeable facilitator, fosters an open dialogue between all parties, and informs them of their options and rights. If a conflict arises between the preferences of the parent and the child's best interest, CSEU typically will engage the child's attorney in the discussion and/or refer the parent—via his or her attorney—to an outside educational advocacy organization for legal services. In CSEU's five-year history, conflicts rarely have occurred due in large part to the unit's involvement of the parent and child in its collaborative approach to educational advocacy.

Cases and prospective clients find their way to each project primarily through a direct referral process, most frequently by another attorney or professional in the child welfare system. EAP and CLC-SEP receive cases via internal referral from their respective organization's staff attorneys who

represent children. While CSEU receives requests for assistance from agency attorney staff, direct advocacy cases most often are referred by foster care agency staff where the CSEU attorney is on-site. At times, a judge appoints one of the projects, such as CLC-SEP, to advocate educationally for a child. The SEC typically receives child welfare case referrals by phone from various professionals in that system, but also accepts non-child welfare-related cases that “walk in the door.”

### *B. Provision of Direct Services*

All four projects provide consultation services, technical assistance, and direct legal representation; however, the forums in which direct legal representation is provided vary. Consultation and brief legal advice are offered for more basic or “elementary” educational issues, such as questions involving enrollment, reading school records and IEPs, and home instruction rights and processes. Consultation services are available to relevant legal stakeholders, family court and child welfare professionals, as well as parents and foster parents.

More complex educational issues are addressed by providing the client with direct legal representation as in the EAP, CLC-SEP, and SEC models. Where direct legal representation is needed, the projects enter into a formal legal assistance agreement with the client, or the court appoints them to represent the client. Direct legal representation may include representation at IEP meetings, mediation, impartial due process hearings, state and federal court education proceedings, and/or state family court proceedings. All direct legal advocacy requires a thorough fact investigation, including interviews of the client and “parent” or education decision-maker and, where appropriate and possible, other relevant parties such as school and medical personnel, service providers, and other persons with knowledge of the child’s educational needs, abilities, and performance. Fact investigation also encompasses a records review as well as classroom observations and school visits where permitted. The four projects engage in advocacy with school officials and, in some cases, with the relevant school district’s legal counsel, in an attempt to negotiate a mutually agreeable resolution without resort to litigation. Where an agreement cannot be reached, EAP, CLC-SEP, and the SEC all initiate and provide legal representation in mediation, administrative hearings and, if necessary, state and federal court education proceedings.

CSEU’s provision of direct legal services is the most limited in scope and type of forums. CSEU routinely conducts interviews with the child, the foster parent or relative caregiver, and, with the biological or adoptive parent’s attorney’s permission, the child’s biological or adoptive parent. CSEU also conducts interviews with school staff and advocates on behalf

of the child's best interests at IEP meetings and Committee on Special Education reviews. Notably, CSEU is not permitted to either participate in or represent the child's best interest in any mediations or hearings governed by special or general education law and regulations, including special education mediations and due process hearings. Such representation is forbidden because in New York City, the school system currently is under mayoral control, and ACS, of which CSEU is a part, reports directly to the mayor. This structure creates the potential for conflict when CSEU and the NYC DOE are unable to reach an agreement via the collaborative negotiation process; in such a case, the family will be referred to outside legal advocacy services for assistance.

CLC-SEP regularly, and EAP and the SEC occasionally, appear in family court proceedings to provide updates to the family court judge on the child's education issues.<sup>48</sup> CLC-SEP and, on occasion, EAP also participate in child welfare case planning meetings. The purpose of this participation is to ensure that the child's educational needs are properly addressed and considered in the placement and permanency decision-making process. CSEU does not appear in family court in-person; instead, a description of CSEU's educational advocacy on behalf of a child may be included as part of the child's permanency report for the court, or the child's foster care agency worker may report to the court in-person on the education-related work being performed.

The duration of direct legal services varies for each program depending on the assessment of the need and nature of the problem. The average length of service for all projects described can span from three to six months to two or more years, depending upon how long it takes to resolve the education-related matter. At times external circumstances may impede the completion of services. This is often the case when the family court's jurisdiction over the child or family ends for those projects, such as EAP, which is housed in the agency representing the child.

#### IV. SYSTEMIC ADVOCACY

Several of the projects have engaged in efforts to bring about system-wide policy changes to improve the delivery of early intervention and special education services to children who are involved in child welfare cases. This work consists of informal collaboration at the local and state levels as well as more formal lobbying efforts.

As a city agency, CSEU is well positioned to influence the policies and procedures used by its sister agencies. CSEU meets regularly with the

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48. EAP staff need not appear regularly in family court proceedings because the child's lawyer at Legal Aid appears at these proceedings and can provide reports based on EAP advocacy.

NYC DOE and participates in quarterly meetings with the city's Early Intervention Program. Meetings consist of informal case conferencing as well as opportunities to identify and discuss systemic issues with which the agencies are grappling. The emphasis on relationship building and inter-agency collaboration has led to better communication between the agencies at all levels and improved outcomes for children. For example, the reporting of unnecessary educational neglect allegations by school staff has decreased. There also have been improvements in data sharing, as designated foster care agency staff members now have access to portions of the NYC DOE's computerized student database and can more easily track a foster child's educational history and progress.

EAP and CLC-SEP also have built collaborative relationships with government agencies in an effort to improve educational outcomes for children in foster care. CLC-SEP helped draft D.C.'s first Attorney Practice Standards for Special Education Panel Attorneys to enhance the quality of representation provided by persons appointed by the D.C. Superior Court to serve as education attorneys in family court proceedings.<sup>49</sup> CLC-SEP also worked with D.C.'s State Education Agency to develop a more robust and functional surrogate parent program for children whose parents' whereabouts are unknown or whose rights have been terminated. This included helping the State Education Agency develop an improved referral process, training and recruiting qualified volunteers, and brainstorming outreach strategies to advertise the program's services to potential referral sources. Similarly, EAP collaborated with the NYC DOE to improve its process for recruiting, appointing, and training surrogate parents.

The SEC has engaged in collaborative efforts as well. It served for more than two years as a member of a statewide working group that was formed to improve communication and collaboration between New Jersey's child welfare agency, the Division of Youth and Family Services, and the state Department of Education, to improve the educational outcomes for children in out-of-home placements. The working group's efforts culminated in the development of a Memorandum of Agreement and an accompanying toolkit that addresses everything from school stability, to information-sharing and confidentiality, to the appointment of local liaisons for purposes of improving collaboration between the agencies at state and local levels. The Memorandum, however, has yet to be signed, as it has been in review with the Commissioners of both departments for more than one year.

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49. See generally SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FAMILY COURT ATTORNEY PRACTICE STANDARDS FOR SPECIAL EDUCATION PANEL ATTORNEYS, *supra* note 40.

While all of the projects have engaged in systemic efforts less formally, only some are permitted to engage in formal efforts due to certain grant and/or government funding restrictions on lobbying. EAP and CLC-SEP are not subject to such restrictions, and thus, both have engaged in formal legislative and regulatory advocacy at the national, state, and local level. When the IDEA was reauthorized in 2004, EAP submitted extensive comments on the proposed federal and state regulations relating to parental consent and surrogate parents. The final regulations reflected significant changes in line with EAP's suggestions. More recently, in 2010, EAP joined other organizations in successfully advocating against a proposed state law that would have imposed a fee on families and foster families whose infants and toddlers received early intervention services. The fee would have burdened struggling families and had the potential to deter people from serving as foster or adoptive parents. EAP also has played a key role in drafting and promoting state legislation to improve school stability for children in foster care, who are subject to frequent school changes as a result of foster home instability. Likewise, in D.C., CLC-SEP has submitted comments and occasionally provided testimony at public hearings on several proposed regulations and policies related to special education and student discipline. CSEU also has commented on proposed local education policies, including recent proposed special education reforms.

## V. CHALLENGES

Despite the many successes of these programs, they have faced numerous challenges. Some of these challenges have been program-specific, such as the conflict of interest concerns that may arise in CLC-SEP's dual representation model or the questions of standing that may arise in EAP's representation of the child and not the "parent" in special education matters. Other challenges, such as high staff turnover of child welfare professionals and insufficient funding, are more common. These challenges may be classified into the categories of changing institutional culture; client identification, definition, and engagement; and program logistics.

### *A. Changing Institutional Culture*

The success of each program has depended largely on the program's ability to shift child welfare institutional culture in order to expand the focus beyond the immediate and paramount safety needs of children to the child's overall well-being, with a spotlight on education. Any change in institutional culture necessitates a shift in case approach; here, it required child welfare professionals, whether they be caseworkers, lawyers for

children, family court judges, or others who are not accustomed to thinking about education, to consider education as a key component in child welfare cases.

Different approaches may be taken to change institutional culture. As discussed above, all four projects have invested significant time in training staff members on how to identify children in the child welfare system with educational needs, how to go about getting those needs addressed, and the anticipated benefits of improving educational outcomes for children both in the short-term (e.g., positive effects on achieving permanency) and the long-term (e.g., reducing the numbers of children in the foster care to juvenile justice pipeline, decreasing homelessness rates upon exiting foster care, etc.). For example, in addition to training, CSEU staff conducts monthly meetings with the NYC DOE and ACS child welfare managers to facilitate case conferencing on problematic cases and to develop relationships between agency personnel at the local level. CSEU staff also educates ACS staff on how the education advocates may best be utilized and encourages ACS staff to seek assistance on education-related matters, thus making education a priority. Similarly, the SEC made monthly visits to OPD-Essex during its first year of the pilot project to assist law guardians with identifying children with special education needs and to provide a forum to discuss case-specific educational concerns.

Changing institutional culture also requires child welfare professionals to assume responsibility for resolving some educational issues of children in foster care. To borrow a term from the world of medical-legal partnerships, child welfare professionals have to shift to a “preventive law”<sup>50</sup> approach—resolving education problems before they become legal problems. To foster this approach, the projects provide information and guidance to child welfare professionals on how to handle more “basic” education issues such as difficulties with enrollment, registration, school records transfers, and referrals for special education, thus leaving the more complex education issues to the education advocates.

For example, one of CLC-SEP and EAP’s biggest challenges today is triaging the large number of referrals received. Initially, both CLC-SEP and EAP accepted almost every referral, no matter how simple or straightforward the issue. Now, due to the high volume of referrals, the projects try to focus on those cases requiring a higher level of expertise

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50. See Ellen M. Lawton, *Medical-Legal Partnerships from Surgery to Prevention?*, MGMT. INFO. EXCH. J., Spring 2007, at 37, 39 (arguing that medical-legal partnerships draw on the strengths of each profession to better leverage community resources to promote health and well-being); see also Megan Sandel et al., *Medical-Legal Partnerships: Transforming Primary Care by Addressing the Legal Needs of Vulnerable Populations*, 29 HEALTH AFFAIRS 1697, 1697-705 (2010) (arguing that medical-legal partnerships can prevent or address legal problems that pose a direct threat to health).



about special education law and policy. In less complex matters, EAP provides written or oral guidance to assist the referring child welfare professional in handling the matter. CLC-SEP provides frequent trainings on education law topics to all GAL staff to equip them with the knowledge and skills to handle less complex education matters, such as school stability advocacy, on their own. These preventive law approaches allow EAP and CLC-SEP to build the knowledge and capacity of other professionals, while preserving the project's ability to take on cases requiring highly specialized expertise.

Changing institutional culture did not occur overnight. The slow pace was compounded further by high staff turnover, particularly among child welfare caseworkers, requiring retraining and reeducation at frequent intervals. This hindered attempts to build a level of internal expertise within the relevant agencies and among child welfare professionals. While high staff turnover of child welfare caseworkers, and to a lesser extent, child welfare attorneys, was a challenge for those education programs operating within and as part of the child welfare institutions, such as CSEU and EAP, it was even harder for the SEC, which operates independently of, and has no routine function in, the child welfare system. The SEC benefited from its outside status and could act free of internal agency procedures and politics; however, the downside was that "pushing in" and gaining acceptance by the agency were made more difficult and the project failed to become institutionalized and self-sustaining.

In contrast, because EAP is housed within Legal Aid's Juvenile Rights Practice, it is an "insider" in the child welfare system and has direct access to clients. CLC-SEP benefits from a similar structure. Most of the EAP and CLC-SEP's referrals come from the attorneys who represent children in the abuse or neglect case. Thus, EAP and CLC-SEP are able to reach children whose parents, foster parent, or caseworkers may not have been able or willing to navigate the special education system or seek help from other legal service providers on their own. Another shared strength of the EAP and CLC-SEP models is location. EAP staff members work on-site at Legal Aid's borough offices, and CLC-SEP's education attorneys work in the same offices as GAL staff. Accordingly, both EAP staff members and CLC-SEP's education attorneys can answer questions and consult with staff on a daily basis. Their presence prompts staff to think about the educational issues at play in child welfare cases, thus supporting and reinforcing the change in institutional culture.

### *B. Client Identification, Definition, and Engagement*

Identifying and defining the client, addressing potential and real client conflicts arising from client definition, and keeping the client engaged in

the legal representation process have presented challenges for the projects.

For children in foster care, it is often difficult to determine who is a child's "parent" or educational decision-maker.<sup>51</sup> At times, the biological or adoptive parent fails to advocate for his or her child educationally, either because he or she is unwilling to do so or unaware that he or she retains this right despite the removal of his or her child. Where parents of children in foster care refuse to act or cannot be identified or where their whereabouts are unknown, courts and school districts frequently fail to appoint surrogate parents to take on the role of educational decision-maker, as required by law.<sup>52</sup> Uncertainty regarding the identity of a child's educational decision-maker delays advocacy efforts because those projects for whom the "parent" is the client, such as the SEC and CLC-SEP, must spend time ensuring that the person seeking representation has the legal authority to make educational decisions for the child. To respond to this problem, CLC-SEP has made a concerted effort to train GALs and child welfare practitioners internal and external to its organization on the importance of clarifying who the child's "parent" or educational decision-maker is early in the case and before a request is made for educational legal representation. The SEC also provides training on this topic.

Defining the client has led to some challenges, particularly in the area of avoiding conflicts in representation. The dual role of attorneys at CLC has increased the potential for conflicts to arise during the course of the representation and has also brought to the forefront the difficulties with engaging many parents and young adult clients in educational advocacy. As a result of CLC serving as both the GAL for the child in the neglect matter and the "parent's" attorney in the education matter, CLC may be forced to withdraw from representation should a conflict arise between what the GAL and the "parent" believe is best for the child's education.<sup>53</sup> Fortunately, such conflicts have arisen in only a few, isolated cases at CLC. Experience has shown that even when the parent is unable or unwilling to provide adequate care to the child in other areas of the child's life, he or she often still recognizes the importance of education and acts to secure whatever services the child needs.

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51. See Janet Stotland et al., *Special Education Decisions for Children in Foster Care: Everyone Has a Role*, 26 A.B.A. CHILD L. PRAC. 17, 22-25 (2007) (noting that a child in foster care may have more than one person who meets the definition of "parent" under IDEA, confusing the issue of who may make special education decisions for the child).

52. See 20 U.S.C. § 1415(b)(2)(A) (2006) (requiring the appointment of a surrogate parent whenever the child's "parent" cannot be identified or located, the child is a ward of the state, or the child is an unaccompanied homeless youth); see also 34 C.F.R. § 300.519(c) (2011).

53. See D.C. RULES OF PROF'L RESPONSIBILITY R. 1.7(a) (amended 2007) ("A lawyer shall not advance two or more adverse positions in the same matter.").

The CLC-SEP and SEC models of representing the child's "parent" also render case outcomes contingent on the adult client's willingness to engage with the legal representation. Due to a variety of stressors and life circumstances, some parents and foster parents are unable to stay in regular communication, attend meetings, or share information relevant to the educational matter with CLC-SEP and SEC attorneys, which can stymie progress on the case. When that occurs, CLC-SEP and SEC attorneys counsel the client about the importance of his or her involvement in the case and brainstorm alternative paths to accommodate the client such that the representation can continue. However, if the client continues to be non-responsive, the CLC-SEP and SEC occasionally have had no other choice than to withdraw from representation. All four projects face this same difficulty when offering training sessions for parents and foster parents, as the projects encounter many competing demands for parents' and caregivers' time. The projects all have experienced difficulty getting parents and foster parents to attend voluntary training sessions while they are juggling court dates, mandatory court-ordered services, and childcare challenges.

In contrast to CLC-SEP and the SEC, EAP defines its client as the child. As stated above, Legal Aid, which houses the EAP, is appointed by the family court to serve as attorney for the child in abuse and neglect cases. Legal Aid's role is to serve as the child's lawyer, and not as a GAL, which is the role of attorneys for children in the CLC. Therefore, Legal Aid provides direct representation and does not substitute judgment for the client unless the client is too young or too impaired to express an opinion about the course of his or her case.

Even though EAP represents the child in education matters, the child's "parent" is considered a key partner in EAP's work since, as noted above, unless parental rights have been terminated or abrogated by the court, parents generally retain the right to make educational decisions for their children, even while their children are in foster care. With permission from the attorney who represents the parent in the family court proceeding, EAP communicates with the parent in developing a plan to meet the child's educational needs. This is essential because, ultimately, the parent will be asked to provide written consent to any evaluations or services negotiated by EAP as neither the child nor the child's attorney has the right to consent under federal law.<sup>54</sup>

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54. See 20 U.S.C. § 1414(a)(1)(D) (requiring that a "parent" provide consent prior to an initial evaluation to determine whether a child qualifies as a child with a disability under the IDEA and prior to the initial provision of special education and related services to the child); see also 34 C.F.R. § 300.300. The definition of "parent" in 20 U.S.C. § 1401(23) does not include the child or his or her attorney. The IDEA does, however, allow states to transfer parental rights to the student when the student reaches the age of majority, as long as the student has the ability to provide informed consent

EAP's practice model ensures that the child's views are represented when crafting an educational plan. This is particularly important for teenage clients, whose "buy-in" often determines the success or failure of a particular plan. In some circumstances, the practice model also grants EAP greater credibility in negotiations with a school district because EAP positions itself as an advocate for the child, rather than an advocate for a caregiver, who may have had a contentious relationship with school personnel in the past.

However, representing the child as the client also presents challenges. First, clients sometimes change their mind about the goals of the representation. EAP must then engage in extensive client counseling and adjust course when necessary. Second, the child's independent standing—through his or her attorney—to request a due process hearing sometimes has been challenged in cases where there is a dispute with the school district.<sup>55</sup>

In addition to challenges presented by defining the client and the potential for conflicts arising from this definition, client engagement has been a struggle that all of the projects have encountered. At times, parents are difficult to engage in education advocacy—while this is a real possibility for any client, the added stressors of having one's children removed, having to comply with case plans in order to have children returned home, and needing to overcome often difficult circumstances resulting in the removal of one's children (e.g., drug treatment), compound parents' ability to take on the education advocacy. In addition, at times, child clients are not willing to engage in the legal representation. This is particularly true for teenagers, who often become frustrated by, and disillusioned with, the education system, are sensitive to the stigma of special education classification, and/or, again, may be compounded by the stressors resulting from having been removed from their family. Lack of

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and has not been declared incompetent under state law. *See* 20 U.S.C. § 1415(m); *see also* 34 C.F.R. § 300.520(b). Thus, in some states, students who have reached the age of majority—typically eighteen—may sign consent for their own evaluations and services.

55. The IDEA provides that a child's "parent" has the right to request a hearing. *See* 20 U.S.C. § 1415(f)(1). However, the IDEA also states that "any party" may present a complaint. *See id.* § 1415(b)(6). States must establish and maintain procedures "to ensure that children with disabilities and their parents are guaranteed procedural safeguards . . ." *Id.* § 1415(a). In *Winkelman v. Parma City School District*, the Supreme Court analyzed the allocation of rights under the IDEA and found that the rights of the "parent" and the child are coextensive. 550 U.S. 516, 517 (2007). By this reasoning, children may have an equal, independent right to seek due process under the statute. Furthermore, children have a constitutionally protected property interest in education and should be able to exercise their own due process rights to vindicate such interest. U.S. CONST. amend. XIV, § 1. *See generally* *Goss v. Lopez*, 419 U.S. 565, 573-81 (1975) (describing the entitlement to public education and the due process required before abridging the right to public education).

engagement, by parent and child clients, limits the ability of all of the projects to advocate educationally and succeed in meeting the client's goals for representation.

### *C. Program Logistics*

Program logistics present challenges as well. For example, staff turnover among child welfare professionals is high, particularly in the foster care agencies. CSEU has had to confront staffing issues along with budgetary constraints, both of which affect capacity building. The high caseloads of ACS staff require much fieldwork and make staff less accessible, creating difficulties for them to undertake educational advocacy efforts on the more "basic" issues for children in their care.

Limited staffing and lack of funding for the pilot project in the SEC were such that it could not devote any full-time employees to the project. This, coupled with the fact that the SEC is an "outsider" to the child welfare field, resulted in the SEC not having a constant, on-site "presence" ready and capable of answering questions as they arose and of handling all the referrals. With respect to the SEC's training initiative, again, the high turnover of child welfare professionals significantly impacted the knowledge base that is critical to identifying and addressing these issues. Moreover, one-time trainings, which the SEC provided, often do not have the long-term beneficial effects, as do repetitive trainings on a topic, where the information learned is more likely to be absorbed in one's mind and integrated into one's practice. Much of the diversity among the four programs is a direct result of, and reaction to, the realities of poor funding and insufficient support for the programs at all levels.

## VI. OUTCOMES

While each of the programs is at a different stage of development, all have made efforts to quantify their work's outcomes and effectiveness in some manner. Some have also utilized program planning and goals setting processes to establish more clear measures of their program's progress. For example, both CLC-SEP and EAP set annual goals for each of their primary service areas. Common goals include, identifying target numbers for the clients they will represent and for the consultations they will perform and outlining the systemic advocacy reforms they aspire to achieve.<sup>56</sup> Both programs then use a variety of tools to evaluate progress towards meeting those goals, including an electronic database to capture and analyze data about their work.

With respect to direct service delivery, all of the programs have

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56. EAP also sets yearly goals for trainings.

developed some mechanism to track quantitative statistics as to the number of cases and consultations handled each year; however, to date, few have developed more sophisticated means to measure specific outcomes of the services delivered. All the programs use electronic databases or other tools to record each time a case is opened and/or a consultation is made. For example, CSEU keeps monthly and yearly statistics on the source and topics of consultations to identify patterns and areas where additional programming and/or training may be needed. However, EAP and CSEU have taken the additional step to gather qualitative information about how they receive cases and their advocacy accomplishments. Thus, in addition to recording consultation data, EAP's database captures information such as the reason for the case referral, the client's classification of disability, and changes to the client's services as a result of EAP's advocacy (e.g., the additional speech and language therapy services obtained and the resolved dispute regarding parental consent). CLC-SEP has recognized the need to capture similar qualitative data and is in the process of developing a list of data points to collect at case closure to better assess its client population and advocacy impact. CLC-SEP also is contemplating contacting former clients at various time intervals—six to twelve months after case closure—to gather data on the sustainability of the outcomes achieved in the legal case.

Collecting data on training efforts is another common area of program evaluation and planning. Each program maintains statistics on the number and types of trainings offered, as well as the topics covered in those presentations. In addition, EAP and the SEC have asked participants to complete evaluation forms at the end of each training session to measure the success of the training program and get feedback on the training's substance, methods, and delivery. The information gathered from these evaluations generally has been positive and proven useful to the trainers in refining the sessions to make them more relevant to the audience. However, the projects have not developed a mechanism for measuring whether the trainings actually increased the legal knowledge and problem-solving skills of participants in the long-term, other than, as in the case of the SEC, keeping track of the follow-up calls seeking additional advice and information received from those who were trained.

## VII. LESSONS LEARNED

Countless studies, some of which are referenced above, have found that the educational outcomes of children in foster care are, at best, poor and, at worst, miserable. This Article has presented four distinct special education program models that are attempting to respond to this critical need by providing a variety of direct service, training, and systemic advocacy.

Although none of the models has developed and implemented a standardized tool to measure the benefits of proper educational advocacy on permanency for children in foster care, all four authors can attest to a plethora of anecdotal evidence of the beneficial effects of the work of their programs. While each of these programs has tremendous strengths, they also have room for improvement and further growth. Below, the authors set forth some of the lessons they have learned over the last several years. It is hoped that this Article inspires the creation of similar programs and that the experiences of the authors provide insight and assistance to future program developers.

First, specific and measurable programmatic goals should be developed and agreed upon by all relevant parties *prior to* creating and implementing the program. Having specific program outcomes and mechanisms set up to measure them at the outset will assist in all aspects of program development, from structure and staffing, to client definition and advocacy approaches, to setting priorities and parameters. Furthermore, in these times of economic hardship, funders, whether within the institution housing the program or outside, want to see detailed and measurable anticipated outcomes and results, and having the same, will give the program developers a hand up in securing financial support.

Second, institutional support at all levels, from high-level administrative officials to those working on the front lines, is critical to program success. This requires more than educating and reeducating relevant players about the issue and the laws and processes available to address it. Marketing of the program is essential to generate buy-in; users of the program must see the benefits and the ease with which they can access the services. Users also must become accustomed to relying upon the program as a resource. Once this occurs, the program becomes a part of the institution and process, and will be considered necessary and indispensable. At the same time, create realistic expectations for the users—no new program succeeds by disappointing the persons for whom it was aimed.

Third, due to the slow pace of institutional change, patience is key. Start small, work out the kinks such as referral and communication channels, information-sharing, and confidentiality issues, and then expand in a logical and methodical way (e.g., by geographic area). The ability to reference and demonstrate past successes will help to open future doors. However, do not take a back seat. Seize any opportunity to demonstrate the capabilities of the program even when not necessarily invited to do so.

Fourth, do not ignore the community. Garner the support of relevant professionals outside the institution as well as those inside. To the maximum extent possible, staff the program in a multi-disciplinary fashion, including social workers, educators, psychologists, public policy-makers,

and attorneys. This will not only bring a variety of skills, talents, and knowledge to the advocacy team, making it all the more strong particularly in the area of special education advocacy, but also will help to endear the program to other child welfare and education professionals and organizations. Commonalities among potential “adversaries” often help to bridge tenuous relationships and make parties more open to communication, negotiation, and collaboration. Even if funding prohibits multi-disciplinary staffing of the program, develop a pool of consultants or an advisory board to help brainstorm and implement ideas for bridging the gaps and improving relationships among different types of professionals, all of whom are supposed to be working to improve the lives and well-being of children.

Fifth and finally, recognize that funding is not everything. These programs can be implemented on both small and large budgets. While the greater the budget, the larger the program staff and the more cases it can handle, there are other ways to increase capacity. Many of the training sessions offered by the four programs highlighted that a little knowledge and small amount of work up front by the host institution’s professionals can go a very long way. Enlisting the education advocacy assistance of child welfare professionals on the frontlines also is critical because there likely never will be enough lawyers in any of these programs to advocate on behalf of every child needing assistance. Additionally, some states have *pro bono* requirements that may be met by handling these types of cases; thus, the development of a strong *pro bono* referral network can help to diffuse the caseload. CASA and other volunteers in some states (e.g., New Jersey) have been trained to take on the education advocacy role as well.

#### CONCLUSION

The challenges involved in effectuating the rights of children in foster care to appropriate special education services more recently have come into focus throughout many areas of the country. The details outlined in each of these programs can serve as a starting point for new initiatives in other jurisdictions. Whether a program is born out of a legal aid or child welfare institution, or an external stakeholder organization, any and all advocacy efforts that target the educational needs of youth in care can have a substantial impact in the fight to ensure that all children, regardless of status, are afforded an appropriate education with equal access under the law.