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## **The Role of Public Interest Lawyers in Social Justice Movements: Seeking Justice Where Educational Inequality, School Discipline, and Juvenile Justice Converge<sup>1</sup>**

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Anne Lee<sup>2</sup>

TeamChild is a nonprofit law office in Washington State that provides civil legal representation to youth between the ages of twelve and eighteen years old who are experiencing barriers in accessing education, housing, and health care. About fifteen years ago, TeamChild was born out of the frustration of public defenders who kept seeing youth cycle in and out of the juvenile justice system without getting their underlying needs met.<sup>3</sup> At that time, public defenders partnered with civil legal aid lawyers to create TeamChild to ensure that youth had advocacy at critical times in their lives.<sup>4</sup> Since starting as a pilot project through The Defender Association in King County, WA, with the backing of Columbia Legal Services and the Washington Defender Association, TeamChild has grown to have a statewide presence and serves over one thousand youth per year in King,

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<sup>1</sup> This article originates in Anne Lee's February 2012 presentation at The 25th Anniversary of the *United States v. Hirabayashi Coram Nobis* Case: Its Meaning Then and Its Relevance Now, a conference hosted by Seattle University School of Law's Fred T. Korematsu Center for Law and Equality. The speech in its original version began as follows:

I want to thank you for inviting us to speak about the role of attorneys in social justice movements. I'm so honored to be here with all of you to share in the legacy of Gordon Hirabayashi. This day has been incredibly inspiring. It is a testament to what courage and perseverance can accomplish.

<sup>2</sup> Anne Lee is an attorney and the Executive Director of TeamChild in Washington State. She received her JD from New York University School and graduated magna cum laude from Princeton University.

<sup>3</sup> *About Us—History*, TEAMCHILD, <http://teamchild.org/index.php/about/6/histor/> (last visited June 9, 2012).

<sup>4</sup> *Id.*

Pierce, Spokane, Snohomish, and Yakima Counties.<sup>5</sup> I see many parallels between our clients' experiences and Gordon's experiences, which I think you will see in these stories about Josh and Mark.<sup>6</sup> They and many others are examples of why public interest lawyers like those at TeamChild can and should be a part of broader systemic reform to ensure that justice is experienced by all.

Josh was seventeen years old when he found his way to TeamChild. He had been caught at school with marijuana, which resulted in a suspension from school for the remaining three months of the school year. Drug possession charges were filed in juvenile court, but the case was diverted from formal processing because Josh had never been in trouble before. The juvenile court diversion program referred Josh to TeamChild for help challenging the length of the suspension from school.

The marijuana incident put Josh on the principal's radar, and Josh was labeled a failing, drug-involved truant. They say hindsight is twenty-twenty. For Josh, his struggles in school really could have been avoided. He had been tested for learning disabilities and first qualified for special education in the second grade. Although he remained eligible for special education throughout his school years, including high school, he never learned to read beyond the second grade level, and his math skills did not progress beyond an elementary school level. By middle school, Josh's peers passed him by as their academic skills advanced. He simply could not keep up.

Josh started skipping classes to avoid the embarrassment. Because he was quiet, respectful, and avoided conflict, his truancy and lack of academic progress did not draw notice. Every year, he passed to the next grade, with his special education plan containing the same goals and objectives as it had

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<sup>5</sup> *About us—Reports*, TEAMCHILD, <http://teamchild.org/index.php/about/10/reports/> (last visited June 9, 2012).

<sup>6</sup> The names of these youth have been changed to protect their privacy. Their stories reflect the author's professional experiences at the Washington State nonprofit organization, TeamChild, where she has served as the executive director since 2001.

in the prior years. By middle school, he assumed he could not learn to read or keep up with his peers. Josh gave up hope. He labeled himself as stupid and as a failure.

TeamChild helped Josh assert his right to an independent evaluation of his special education needs. Students have a right to an independent evaluation when they believe that the school district has not adequately assessed their disability needs. The independent evaluator concluded that Josh had a significant learning disability, but that it could be overcome with intensive instruction and literacy training. The evaluator also concluded that Josh's school avoidance behaviors were a response to having internalized his lack of success over the years, which had additionally resulted in Josh having low self-esteem. In settling Josh's case, TeamChild was able to secure tutoring and support for him as compensation for the years that the school district failed him. Although he has a long road ahead, Josh has hope of moving beyond the labels that defined him for so long.

Mark was fifteen years old when he was emergency-expelled from school and referred to juvenile court. This was the first time Mark had been in trouble. Being emergency-expelled meant that he was immediately and indefinitely out of school.

Mark was expelled because he was caught up in the police's undercover sting to expose students selling drugs at the high school. Mark was approached several times by an undercover police officer, posing as a student, who asked him for drugs. Mark did not have any drugs. Then, one time, Mark had a small amount of marijuana, and he sold it to the undercover officer. The amount was about the size of half a sugar packet and weighed half of one gram. The undercover officer came back several more times asking for more drugs, but Mark did not have any. About a month later, Mark was expelled along with a dozen other students—all accused of selling drugs. His case was processed in juvenile court; he was locked up in detention for a few days and then was on probation for a few

months. Mark's parents put him under a strict curfew and made sure that he stayed on track with his probation requirements.

During this time, Mark was referred to a TeamChild attorney because he was not allowed to go back to school under the emergency expulsion. TeamChild represented Mark in the school discipline hearing, which he lost. Mark appealed the case to the school board and lost again. Mark petitioned the superintendent for readmission to school and was denied. The next stage of appeal was in superior court, and TeamChild helped Mark and his parents bring his case to a judge, who would consider all the evidence and make a decision about whether Mark posed a threat that justified his continued, indefinite exclusion from school. The appeals process took over a year, during which time Mark was not allowed to return to school. While the family waited for the superior court case to be heard, they kept asking the school district to allow Mark back under the state's readmission process. Under the readmission process, districts have wide discretion to decide when and under what circumstances a disciplined student may return to classes. Mark and his family requested and were denied readmission a total of *four* times during the year he was out of school. The district stood firm in its zero tolerance approach to Mark's behavior, providing no explanation about why his petition was denied or what he needed to do to be more successful in the process. When Mark's case was finally heard by the superior court judge, the emergency expulsion was overturned. Mark and his family persisted in their appeal when many youth and their families would have given up.

For Josh and Mark, courage and perseverance played a big part in their experiencing justice. But for many young people in similar situations, and even for these two youth, justice may come too late or not at all. As lawyers in the public interest, we have opportunities to raise awareness on issues that are important to individuals, families, and communities that are marginalized by economic disparities, discrimination, and inequitable treatment.

TeamChild has a unique place in the legal aid delivery system in Washington. Our advocacy straddles the line between the juvenile justice system and the community-based systems of care for children and youth. Among the many things that have contributed to positive outcomes for our clients is the ability of our staff attorneys to navigate these multiple systems and hold them accountable to the children they were designed to serve. As lawyers, we are able to bring our clients' perspectives and voices to the decision-making processes that most affect their lives, and stand by them to ensure that their rights are not lost or compromised in the process. Since TeamChild's inception, education law has been a primary focus of our work. We have represented thousands of children in school discipline matters. As our organization has increased its capacity and learned through experience representing youth, we have been able to take our advocacy to another level of strategic systemic reform, in particular around education equity issues.

For the youth that we serve around the state, education equity issues are most pronounced where school discipline and juvenile justice involvement converge. The unequal treatment of youth at this convergence results in huge gaps in opportunities, achievement, and positive outcomes. These youth are marginalized and criminalized because of their behavior and rule breaking. Our public school systems persist in excluding young people without evidence that exclusionary discipline actually works to keep schools safe or help youth have positive education outcomes. Youth of color and those living in poverty bear a disproportionate share of the education system's harsh responses to behavior. Research repeatedly confirms, over and over again, the incredible achievement gaps for youth of color, the tremendous disproportionality in school discipline, and the low graduation rates for youth involved in the juvenile justice system. Advocacy

organizations like the Advancement Project,<sup>7</sup> the Southern Poverty Law Center,<sup>8</sup> and the American Civil Liberties Union<sup>9</sup> have generated and advanced reform discussions at the national level. Reports, such as *Breaking Schools' Rules*, issued by the Council of State Governments, shine new light on the issues.<sup>10</sup> In July 2011, Attorney General Eric Holder and Secretary of Education Arne Duncan announced the Supportive School Discipline Initiative to target discipline policies that push children out of schools and into the juvenile justice system.<sup>11</sup> All of these efforts create a fertile environment for local reform in Washington State.

Youth have the experience and wisdom to know what does and does not work, but they rarely get opportunities to weigh in during the policy-making process. At TeamChild, we are committed to bringing the experiences of the youth we have been serving to reform efforts in Washington State. While we have intentionally recruited young people to train adults, professionals, and system players about how to better serve the needs of youth, we are exploring new ways in which our agency can mobilize the communities and individuals most impacted by harmful policies to be the voice and catalyst for change. In addition to bringing youth to the table, we are also forging new partnerships with community organizations that are interested and active in education reform, but may not have the exposure to or awareness of the experiences of our clients and their families.

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<sup>7</sup> See, e.g., ADVANCEMENT PROJECT, <http://www.advancementproject.org/> (last visited May 25, 2012).

<sup>8</sup> See, e.g., S. POVERTY L. CENTER, <http://www.splcenter.org/> (last visited May 25, 2012).

<sup>9</sup> *School-to-Prison Pipeline*, AM. C.L. UNION, <http://www.aclu.org/racial-justice/school-prison-pipeline> (last visited May 25, 2012).

<sup>10</sup> Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice*, JUSTICE CENTER (July 2011), available at <http://justicecenter.csg.org/resources/juveniles>.

<sup>11</sup> *Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices*, U.S. DEP'T JUSTICE (July 21, 2011), <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html>.

As a community, we owe it to youth like Josh and Mark to create better systems. I invite any of you to join our efforts in transforming our education and juvenile justice systems so that young people not only experience justice, but also have meaningful opportunities for success in education, employment, and life.