

Unwarranted Disciplinary Action Toward Foster Care Children with Special Needs

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I. Introduction

The federal Individuals with Disabilities Education Act (“IDEA”) guarantees an appropriate education for all children with disabilities which impact their educational performance. This law applies to children in foster care. Approximately half a million children are in foster care nationwide. Unfortunately, many of these children exhibit significant problems in school. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

Foster children with special education needs rarely receive appropriate services to address their unique difficulties. Kathleen Kelly, The Educational Crisis for Children in the California Juvenile Court System, 27 Hastings Const. L. Q. 757, 758 (2002). As a result, they are inappropriately labeled as “behavioral problems.” Much too often, these children are subjected to unwarranted disciplinary actions such as suspensions and expulsions. These types of punitive measures do not reduce nor address inappropriate behaviors, but rather penalize children for having disabilities. Susan Cole and M. Geron Gadd, Uncovering the Roots of School Violence, New England Law Review (Spring 2002), available at WL, TP-ALL database. As fully detailed infra, three factors significantly contribute to the lack of educational success experienced by foster children with special needs: 1) lack of communication between caseworkers, foster parents, and school personnel, 2) inappropriate special education assessments, programs and services, and 3) multiple placement changes.

II. Lack of Communication and Responsibility

Foster children generally have several different agencies and adults involved with their lives. These agencies and individuals often lack a full understanding of their educational needs and fail to acknowledge primary responsibility for their educational progress. According to the Vera Institute study, foster parents, caseworkers, and educators frequently suggest responsibility for monitoring academics should reside with someone other than themselves. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

A. Educators

While educational success should be the school’s primary goal, much too often there is little awareness of a child’s foster care status and the circumstances surrounding his/her home-life and family background. Many educators involved in the Vera Institute study were reluctant to acknowledge the differences between experiences endured by foster children and those of

other children with conventional families. Several school staff members argued that the school's general population shared similar characteristics as foster children, such as dysfunctional families, abuse and poverty. Other staff members indicated that academic or behavioral problems were associated with a vague notion of instability and inadequate adult involvement in foster children's lives. The study found that many school staff members believed foster children learned to be manipulative from their experiences in the child welfare system. Consequently, interactions between school staff and foster children largely consisted of negative disciplinary actions, instead of meaningful intervention. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

Foster parents report they are often prevented from being a team member in their child's educational plan. Susan Kellam, New School, New Problems: Foster Children Struggle in U.S. Schools (2000). According to some foster parents, schools prefer to appoint a surrogate parent who is likely not to advocate for the child and "make waves." Nearly all foster parents interviewed by Kellam stated that schools treat their foster children with less respect and concern than the other children in school. A foster parent trying to advocate for services was told by the principal, "it's just a foster kid."

Foster parents further complained that school personnel do not understand the demands placed by the child welfare system, including court appointments, therapy and doctor's appointments. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002). Several foster children in the Vera study reported they frequently missed school because of doctor's appointments. One child attributed his failing grades in Math and English to missing several tests due to biweekly doctor's appointments for a heart condition. Similarly, many foster parents reported children were not allowed to make up tests or homework assignments missed due to therapy sessions, doctor's appointments, or court appearances. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

B. Foster Parents

Educators often blame foster parents for difficulties their children experience in school. These problems often include having too many children in their care, not taking responsibility for children's behavior problems, not taking academics and homework seriously, and not providing a structured environment to study. School staff often claimed they were not in a position to take initiative, such as enrolling the children in tutoring programs or testing them for placement in special education. Most school staff interactions with foster parents focused largely on behavioral issues, rather than academics. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

C. Caseworkers

Though all caseworkers interviewed for the 2002 Vera report explained their clients' educational progress was important, their involvement was largely limited to dealing with behavioral problems in school and not academics. Beyond the required school visits and behavioral crisis interventions, caseworkers did not take part in duties regarding education and often stressed that education was primarily a foster parent responsibility. In the 2002 study, caseworkers reported that foster children with emotional and learning disabilities are often

undiagnosed and neglected. These children are left in a constant struggle to catch up without appropriate support or assistance. This scenario often causes frustration which leads to behavior problems. Instead of providing the extra support required to succeed in school, these children are often disciplined for their behavior. Caseworkers often blame foster parents for poor parenting skills as well as schools for being poorly managed and bureaucratic. The study also revealed that caseworkers shared a belief that many children are negatively affected by teachers who are biased against foster children. Marni Finkelstein, et al., What Keeps Children In Foster Care From Succeeding In School?, Vera Institute of Justice (July 2002).

III. Inappropriate Assessments and IEPs

Studies show approximately twice as many foster children are enrolled in special education than non-foster care children. Mason Burley and Mina Halpern, Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care, Washington State Institute for Public Policy (November 2001), <http://www.wsipp.wa.gov>. However, many foster children, particularly those in out-of-home placement, do not receive appropriate special education and related services. While many children in the child welfare system should qualify under the eligibility criteria of Emotionally Disturbed, far too many evaluators do not consider a child's unstable home-life, the fact that they have been neglected or abused and subjected to multiple placements as factors to qualify for special education services. Susan Kellam, New School, New Problems: Foster Children Struggle in U.S. Schools. (2000); also Mason Burley and Mina Halpern, Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care, Washington State Institute for Public Policy (November 2001), <http://www.wsipp.wa.gov>. School-aged children in foster care have a high percentage of school failure and behavior problems. Bonnie T. Zima, et al., Behavior problems, academic skill delays and school failure among school-aged children in foster care: their relationship to placement characteristics. Journal of child and Family Studies, vol. 9 (March 2000). Without proper intervention, these children are often subjected to unwarranted disciplinary action that does not address their needs.

A. Abuse and its impact on education

Low academic performance of foster youth has been attributed to various factors, however researchers have found the experiences of children prior to foster care placement have lasting and profound effects. Learned violent behaviors, difficulty developing relationships with adults and peers, and the detrimental effects of abuse on the emotional, social and physical development of children affect children's ability to concentrate and successfully perform in school. Mason Burley and Mina Halpern, Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care, Washington State Institute for Public Policy (November 2001), <http://www.wsipp.wa.gov>. Burley and Halpern cite one study that demonstrated 34% to 41% of foster children performed below grade level. Trauma from an abusive home-life, as well as the trauma from being taken into care, plays a significant role in the problems which manifest into disruptive and violent behavior in schools. Children who are abused often enter non-abusive situations with heightened levels of anxiety and fear, and school failure often results from various behaviors that are manifestations of the fear and anxiety suffered by traumatized children. Susan Cole and M. Geron Gadd, Uncovering the Roots of School Violence, New England Law Review (Spring 2002), available at WL, TP-ALL database.

According to Cole and Gadd, abused children may avoid relationships at school with teachers and students, missing a critical foundation upon which learning takes place. An abused child also might be preoccupied with self-protection to the exclusion of healthy social and cognitive learning experiences. Other symptoms of trauma can include antisocial behavior, depression, and self-destructive or suicidal behavior. Susan Cole and M. Geron Gadd, Uncovering the Roots of School Violence, New England Law Review (Spring 2002), available at WL, TP-ALL database.

Foster children who exhibit these symptoms of trauma may experience rejection by teachers and peers, contributing to a downward spiral of self-esteem. Further, children excluded from the special education system who exhibit symptoms of trauma are subjected to constant suspensions and expulsions. However, punitive punishments are ineffective because they fail to address the origin of a traumatized child's aggressive behavior. Conversely, a punitive approach may re-traumatize a child by reinforcing their sense of insecurity, helplessness, and isolation. Susan Cole and M. Geron Gadd, Uncovering the Roots of School Violence, New England Law Review (Spring 2002), available at WL, TP-ALL database.

B. Misdiagnosis and its impact on education

Further, researchers have also found that foster children are often mislabeled with attention deficit hyperactivity disorder ("ADHD") or Oppositional Defiant Disorder ("ODD"), leading to their languishing in special education programs that do not meet their needs. It is important to distinguish ADHD from posttraumatic stress disorder ("PTSD") because "of the seeming overlap of symptoms between these disorders." Eth S. (editor): PTSD in Children and Adolescents (Review of Psychiatry Series, vol. 20, no. 1; Oldham JM and Riba MB, series editors), Washington, DC, American Psychiatric Publishing, 2001. According to Eth, symptoms of impulsivity, hyperactivity, and interpersonal difficulties characterized in ADHD, are also evident in PTSD. However, treatment for the two disorders is very different and misdiagnosis will likely lead to ineffective or detrimental progress. For example, stimulant medications used to treat ADHD, would potentially aggravate a host of symptoms in PTSD including hyperactivity and sleep difficulties. Eth reports that the three types of traumas most likely to cause PTSD are rape, childhood physical abuse, and childhood neglect. One study cited by Eth compared three groups of foster care children. The first group had a history of physical abuse, the second group had a history of sexual abuse, and the third group had no history of abuse. The percentages of subjects who met diagnostic criteria for PTSD were 42%, 64%, and 18% respectively. According to Eth, children with PTSD have been shown to have more behavioral, emotional, and interpersonal problems, academic failures, suicidal behaviors and health problems than those with ADHD. Therefore, PTSD should be contemplated in cases suggestive of child trauma before the sole diagnosis of ADHD is reached.

C. Inappropriate evaluations and services and their impact on education

Special education evaluations should consider the traumatic aspects of a child's disabilities and offer trauma related services as needed to address his or her individual needs. Foster children who are anxious and uncertain about their situations often experience emotional difficulties that affect their performance in school, and school personnel should consider whether children who have experienced stress at home might need to be evaluated for special education. Susan Cole and M. Geron Gadd, Uncovering the Roots of School Violence, New England Law

Review (Spring 2002), available at WL, TP-ALL database. The Individuals with Disabilities Education Act (“IDEA”) applies to children with emotional and learning disabilities; therefore, a traumatized child’s IEP should be a truly individualized incorporating related services, such as counseling, parent training, and social work services at home and in school. Nancy McCormick, *Working With The Special Education System to Benefit Children*, 5 South Carolina Lawyer 10 (May/June 1994), available at WL, 5-JUN S.C. Law 10. However, McCormick reports that while counseling and social work services may be among the most valuable forms of help to enable a child to transition from one setting to another, they are seldom included in IEPs.

IV. Multiple Placement Changes

A. Multiple changes and its impact on education

The most pronounced differences between foster and non-foster youth appear in the areas of mobility, stability, and promotion. In California, where there are over 100,000 kids in foster care, foster children attend an average of 9 different schools by the age of 18. Kelly, 27 Hastings Const. L. Q. 758 (2000). To date, most studies conducted indicate when children change schools, their performance suffers because they are forced to adjust to new classmates, teachers, and curricula. Dylan Conger and Alison Rebeck, *How Children’s Foster Care Experiences Affect Their Education*, Vera Institute of Justice (December 2001). Foster children who are moved mid-semester must also grapple with delays in enrollment, difficulties with the transfer of their records, lost academic credits, and delays in delivery of their special education services. Kelly, 27 Hastings Const. L. Q. 759 (2000).

Much too often, children in foster care experience low academic performance and engage in truancy as a result of frequent school transfers and lost instructional time. Claudette Brown, *Crossing Over: From Child Welfare To Juvenile Justice*, 36 Maryland Bar Journal 18, 22 (May/June 2003). Foster children are estimated to lose four to six months of educational progress when they change schools, and it is not uncommon for them to experience delays in enrollment and difficulties receiving services for special needs. Susan Kellam, *New School, New Problems: Foster Children Struggle in U.S. Schools* (2000). Repeatedly changing schools disrupts the educational process and can hinder a child’s ability to learn and succeed academically. Further, recognizing educational problems can be particularly challenging for school staff when foster children move from school to school or district to district. Mason Burley and Mina Halpern, *Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care*, Washington State Institute for Public Policy (November 2001), <http://www.wsipp.wa.gov>.

B. Multiple changes and its impact

Even when a child may require special education services, frequent placement changes make it especially difficult to become eligible for special education. Foster children who are subjected to frequent moves are often not in one school long enough for staff to complete the assessment process for special education. Consequently, it is not surprising that foster children fall behind in school, become unmotivated, and then eventually stop going to school altogether. Claudette Brown, *Crossing Over: From Child Welfare To Juvenile Justice*, 36 Maryland Bar Journal 18, 22 (May/June 2003).

V. CONCLUSION

The IDEA guarantees an appropriate education for all children with disabilities which impact their educational performance. Because foster children frequently exhibit significant problems in school, their education should be especially “individualized” to meet their unique needs. However, foster children with special needs rarely receive appropriate programs and support services. As a result, they are inappropriately labeled as “behavioral problems.” Research shows that foster children miss important instructional time due to multiple transfers, delays in enrollment, school records not being transferred, and demands of the child welfare system that include mandated therapy, court dates, and doctor’s appointments. Other issues unique to children in foster care that effect school performance, besides the trauma of abuse and neglect, include anxiety regarding the status of their case, concern for biological parents and siblings, and insecurity about their own stability and safety while in care. Much too often, these children are subjected to unwarranted disciplinary actions such as suspensions and expulsions. In order to help foster children succeed in school, the 2002 Vera report recommends improved communication and basic training for teachers and school staff on the structure and function of the child welfare system, improved coordination of school transfers, and encouraging foster parents taking a more active role in their foster child’s educational progress. Other researchers recommend that foster children be assessed for trauma; the number of school and placement changes be minimized, caseworkers track foster children’s educational progress more consistently; improve communication between educators, caseworkers, and foster parents; and schools actively seek out children for special education assessments, reduce the utilizations of punitive punishments, and provide foster children with truly individualized educational plans.

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