INSIDE

The Supreme Court's Reeves Decision Levels the Playing Field in Employment Discrimination Cases

Affirmative Litigation Under the Legal Services Corporation Restrictions

Civil Rights and Human Rights: A Call for Closer Collaboration

A Vital Child Care Quality Initiative: Addressing the Needs of License-Exempt Home Child Care Providers

Welfare Reform and the College Option in California: Lessons Learned

A Chronicle of Suburban Ochers

Decisions on Federal Court Access During the Supreme Court's 1999-2000 Term
Welfare Reform and the College Option in California: Lessons Learned

By Diana Spatz, Jodie Berger, and Tamu K. Hamed

Numerous studies document the effectiveness of higher education and training in enabling low-income parents to attain stable employment at wages that support a family. Nevertheless, federal welfare reform limited education and training opportunities for parents on public assistance. As a result, perhaps the most significant impact of welfare reform has been to move greater numbers of parents from welfare to low-wage, dead-end jobs. As the number of families in poverty continues to grow, advocates' role will be critical in increasing low-income parents' access to higher education and training and higher-wage jobs.

Our intent in this article is to examine successful grass-roots and legal advocacy strategies used to protect access to postsecondary education under welfare reform in California. We describe post-secondary educational opportunities through a self-initiated program under California Work Opportunities and Responsibilities to Kids (CalWORKs); county implementation of educational opportunities under CalWORKs and the grass-roots response; legal strategies for resolving implementation problems with the self-initiated education program; county failure to implement the legal resolution; and the challenges of responding to devolution of responsibility from the federal government to the state to the county. We outline avenues to education under CalWORKs other than the self-initiated program and options for pursuing education outside of Temporary Assistance for Needy Families (TANF). To demonstrate how these options can help clients, we give an example of postsecondary education as a high-wage job strategy.

1 Studies of students receiving welfare who were enrolled at the City University of New York found that higher education was a key factor in welfare mothers attaining long-term, career-path employment and significant earnings gains. See Marilyn GitteI et al., FROM WELFARE TO INDEPENDENCE: THE COLLEGE OPTION (Mar. 1990). In the National Adult Literacy Survey, researchers assessed the skill levels of nearly 1,600 women who were identified as welfare recipients and compared these data to labor market needs in occupations in demand through 2006. A major finding of the study was that women leaving welfare for work could earn higher incomes and keep their jobs longer with better job placement, on-the-job training, and targeted, time-limited education and training to boost their skills. See Anthony P. Carnevale & Donna M. Desrochers, GETTING DOWN TO BUSINESS: MATCHING WELFARE RECIPIENTS' SKILLS TO JOBS THAT TRAIN (1999).

2 California and national studies document that work-first strategies are forcing most recipients into low-wage, temporary work with no career mobility. See, e.g., Doris N. Co & Ana Matasantos, THE BROKEN PROMISE: WELFARE REFORM TWO YEARS LATER, executive summary (Jan. 2000); Abloc Sherman et al., WELFARE TO WHAT: EARLY FINDINGS ON FAMILY HARDSHIP AND WELL-BEING (Dec. 1998).
the last section we give advocates policy recommendations on ways in which access to postsecondary education can be improved in the 2001-2002 TANF reauthorization.

I. Access to Postsecondary Education

Under Welfare Reform

Before welfare reform in 1996, parents receiving welfare in California could access higher education in two ways. One was to self-enroll in a higher education or training program and use supportive services outside the welfare system. These services included student financial aid; college-based programs that gave academic counseling and limited assistance with book vouchers, child care, and transportation; and subsidized child care programs on campus and in the community. As self-enrolled students, parents could attend college and receive aid for as long as their family was eligible, with no limitations on their education. However, they were not eligible for supportive services through the welfare system.

The other way was through the Greater Avenues to Independence program (GAIN), California’s state-sponsored training program for welfare recipients; this program gave states the option of allowing welfare recipients to attend college. Through GAIN, parents could pursue up to two years of higher education or training if needed to attain employment and could receive limited assistance for child care, transportation, and books.

However, with the creation of TANF, postsecondary education that counted toward federal work participation rates was restricted to 12 months of vocational education or training, and states could count only a limited number of parents in education and training programs. Nonetheless several states have provided additional access to postsecondary education in their TANF programs, including California.

Under CalWORKs students on public assistance in self-initiated programs of higher education or training have the right to complete 18 to 24 months of higher education and training, as long as they meet four criteria: (1) students must be enrolled in an education and training program at the time of their “appraisal,” the first CalWORKs appointment (i.e., they must be self-initiated); (2) the program must lead to a certificate or degree, including an associate’s or baccalaureate degree; (3) the education or training program must lead to employment; and (4) the student must make satisfactory progress in the program.

---


5 Twenty-two states have policies allowing college degree programs of longer than the 12 months that are countable under federal law. Seven of these states have enacted legislation to increase access to postsecondary education for recipients of Temporary Assistance for Needy Families. See Office of Planning, Research, & Evaluation, U.S. Dept of Health & Human Servs., Second Annual Report to Congress on the Temporary Assistance for Needy Families (TANF) Program (Aug. 1999). A state also may use TANF funds for postsecondary education in ways not considered “TANF assistance” subject to the 60-month time limit. A state may fund programs such as work study, child care, and transportation benefits for student parents in education. See generally 45 C.F.R. § 260.31 (1999). Many states also have separate state-funded programs for postsecondary education. These programs are not limited by work participation rules, time limits, and other TANF requirements. For more information, see Mark Greenberg et al., Center on Law & Soc. Policy, State Opportunities to Provide Access to Postsecondary Education Under TANF (rev. Feb. 2000) <www.clasp.org/pubs/jobeducation/Postsec%20and%20TANF%20final.htm>.

Time spent in class, internships, laboratories, supervised study halls, and work-study and other employment counts toward the weekly work requirement. CalWORKs also allows graduate education in the form of a master’s teaching credential.8

CalWORKs requirements present certain challenges for self-initiated program students. These students face a more restrictive list of allowable work activities than other CalWORKs participants. They receive work participation hours only for time spent in class, internships, laboratories, subsidized and unsubsidized employment, job search, on-the-job training, and community service.9 In contrast, non-self-initiated-program parents—referred to ‘education and training by the county—may receive credit for work participation hours in 18 activities, including drug and alcohol treatment, mental health services, and domestic violence counseling.10 This inequity makes CalWORKs particularly challenging for student parents with multiple barriers to their education and employment goals.

II. County Implementation and Grass-Roots Response

Because California delegated TANF implementation to its 58 counties, grass-roots advocacy efforts were particularly important after CalWORKs was passed.11 State law provided the outline of program requirements but gave counties substantial discretion in developing their plans and delivering services.12 The law required that “the county welfare department and local education agencies or providers” develop a list of courses and job training programs “that they agree lead to employment.”13 That list was to be “based on an analysis of job demand and employment opportunities within that county using currently available, up-to-date information, and an analysis of how the courses and job training programs will assist CalWORKs recipients in securing employment.”14

In response to devolution of implementation to the counties, student leaders involved with Low-Income Families’ Empowerment Through Education (LIFE-TIME) developed a strategy combining community organizing, grass-roots policy development, and legal advocacy to achieve three goals: (1) ensuring that local welfare policy encouraged access to education for CalWORKs parents, (2) informing CalWORKs students and college staff serving CalWORKs students about students’ rights under welfare reform and how they could stay in school, and (3) ensuring that county welfare departments correctly implemented the self-initiated program provisions of the law. CalWORKs students solicited the advice of legal advocates and subsequently forged a working partnership that later was significant in helping such students stay in school. This partnership also resulted in ground-break-

Because California delegated Temporary Assistance for Needy Families implementation to its 58 counties, grass-roots advocacy efforts were particularly important after the California Work Opportunities and Responsibilities to Kids program was passed.

---

8 Id. §11325.23(a)(2).
9 See id. §11325.23(a)(3)(C).
10 See id. §11325.6. Non-self-initiated parents are those whom the county assessed as needing education or training and who were referred to such programs. Because counties severely limit referrals to education, qualifying as a self-initiated program student is important. For more information on “referred” education, see infra section VI.B.
12 See id.
13 See id. §10200(b).
14 See id.
ing work in county welfare policy and access to postsecondary education.

Student leaders developed policies for local implementation based on the broadest interpretation possible under the self-initiated program statutes. For example, student leaders and advocates convinced Alameda and San Francisco counties to give self-initiated program students the option of being assessed and referred to education so that they could be granted unsupervised homework and study time. Alameda County also agreed to defer enrolling students into CalWORKs until the end of the year, effectively buying them two more semesters in school before their 18- or 24-month training clock began.

LIFETIME successfully advocates the addition of cosmetology to the approved list of educational programs, despite county claims that it was not a viable occupation for low-income women. The group advocated that the county welfare department work with legal advocates, educators, and group members to develop the Alameda County CalWORKs Education Policy. The county later adopted this policy-the only policy in the state expressly to support education for CalWORKs recipients. The group also successfully advocated the creation of local scholarship funds in San Francisco and Santa Clara counties to help students attain their long-term educational and employment goals when they are no longer supported through CalWORKs.

The support of the local legal advocacy organizations was particularly important for outreach efforts to CalWORKs students. In the San Francisco Bay Area and San Diego County one such effort, developed with the assistance of legal advocates, was LIFETIME’s community awareness campaign, in which over 400 CalWORKs students, educators, and community groups attended workshops on program changes under CalWORKs and learned about students’ rights to education and ways they could continue in school. The backing of legal advocates became increasingly important as LIFETIME advocates subsequently came under attack for allegedly giving students incorrect information.

However, perhaps the most important outcome of this partnership was its success in ensuring that counties correctly implemented the self-initiated program statutes. LIFETIME’s community awareness campaign and legal advocates’ outreach and training sessions clarified that students were having problems under county implementation of self-initiated program rules, with many students being illegally sanctioned or forced to quit school. Legal services organizations also conducted statewide training sessions on CalWORKs; at these sessions college counselors expressed confusion about how the training information was very different from the county’s program requirements, tipping off advocates to the problems with county implementation. We soon realized that student problems with self-initiated programs were not due to random worker errors or individual factual disputes but rather to a statewide failure to follow the law.

III. Legal Strategies for Resolving Implementation Problems

While community organizing, grass-roots policy development, and local advocacy were key to protecting access to postsecondary education under CalWORKs, legal strategies also were necessary. California is fortunate to have several programs without Legal Services Corporation restrictions. The Employment Law Center and

15 See Karen de Sa, Cosmetology Students State Case for Childcare, Oakland Trib., Mar. 29, 1999, at B1. Cosmetology students were the single largest group of CalWORKs students in Alameda County.

16 The “Know Your Rights” flyer of Low-Income Families’ Empowerment Through Education (LIFETIME) may be ordered by calling 510.452.5192.

“Santa Clara County Social Services Agency staff made these comments during a July 2000 meeting with LIFETIME student advocates. At this meeting, student advocates learned that the county was giving students incorrect information in violation of the self-initiated program statutes.
the Western Center on Law and Poverty organized a legal team comprised of staff from their offices as well as from Equal Rights Advocates and the Center on Poverty Law and Economic Opportunity to address the implementation problems with the self-initiated program.

Challenging the county’s broad non-compliance with the state statutory self-initiated program requirements, the legal team prepared a demand letter to the Department of Social Services; the letter listed 11 problem areas that had been identified in different parts of the state.18 The team documented statewide problems involving county self-initiated program policies. It requested information from selected counties and community colleges on the numbers of self-initiated program students enrolled, the number of CalWORKs recipients in community colleges, and the number of approved and disapproved self-initiated program students.

The team then sent several counties a Public Records Act request, the state equivalent of a Freedom of Information Act request, for any written policy or materials on self-initiated programs, including the list of programs that the county would approve as “leading to employment.” The team’s review of county policies quickly revealed that counties were incorrectly implementing the self-initiated program law.19 The responses to the Public Records Act request also showed that some counties had no written policies, even though due process and state regulations required them.20

Less than two weeks after the team sent the demand letter, the Department of Social Services indicated that it was interested in resolving the self-initiated program problems. After the team supplied specific examples of the problems and a list of the counties in which they were occurring, the state was willing to resolve the core issues in the demand letter. On that basis, the team did not file suit. Resolution of the statewide self-initiated program implementation problems therefore was handled entirely through direct advocacy with the state.

Ultimately the state complied with all the actions requested in the demand letter and issued a 19-point all-county letter on handling self-initiated programs.** For students whose cases had been mishandled, the state agreed to issue retroactive benefits and reimbursement for supportive services and to “turn back the clocks” on student training time. This was significant because the state virtually never agreed to issue retroactive benefits with-

---

18 The 11 problem areas were failing to give written notice of the reasons for self-initiated program denials, sanctioning students for refusing to sign welfare-to-work plans that provided for activities that conflicted with the self-initiated program, failing to develop the statutorily required list of approvable programs, placing arbitrary limits on the length of self-initiated programs, failing to inform students about how they could obtain approval for a program on the list of approved programs, refusing to approve self-initiated programs that could not be completed within the welfare-to-work training time of 18 to 24 months, interfering with students’ course selections and refusing to count time spent in courses needed for the degree or certificate if they were outside students’ majors, denying self-initiated programs to students who met the enrollment requirement, refusing to count work-study employment toward hours of participation, requiring students to participate in job searches without informing them that they were not required to accept a job that would interfere with their self-initiated program, and denying self-initiated programs based on prior educational programs attended through California’s Greater Avenues to Independence program.

19 See Counties’ Responses to Equal Rights Advocates’ Public Record Act Request (Nov. 11, 1998) (responses on file; with Equal Rights Advocates and Employment Law Center).

20 See id. See also CAL. MAN. POL’Y & PROCS. § 11-501.3 (Feb. 10, 1999) (state regulations requiring written county policies) (regulations also available at www.dss.ca.gov/getinfo/policypro.html); All County Letter 00-08, California Work Opportunity and Responsibility to Kids (CalWORKs) Program County Policies and Procedures (Jan. 3, 2000) (also available at www.dss.ca.gov/getinfo/ac199/00-08.PDF).

out the filing of a lawsuit and because it quickly resolved the issue of whether lost training time could be recouped when a recipient’s case was mishandled. The state also issued several notices to be used in response to self-initiated program claims—an important step because the state had almost no CalWORKs notices that counties were required to use.

The legal team concluded that the positive aspects of resolving the dispute without filing suit outweighed concerns about the process. Some solutions obtained might not have been available in an adversarial setting or would have forced court review of the disputed resolution with no guarantee of the same results. Significantly the process helped advocates establish a working relationship with the administration; this was later useful in resolving other CalWORKs problems without resorting to court.

One pitfall, however, was that administrative resolution operated without judicial time frames. The parties had lengthy discussions clarifying the problems; every document involved prolonged negotiations; and resolving how and when to notify recipients of the claims process caused significant dispute and substantial delays. Despite these difficulties, the entire dispute was resolved in seven months—a much quicker resolution than if the state had fought the suit.

IV. County Failure to Implement the Legal Resolution

The resolution of the self-initiated program problems provided for a claims process for current, former, and sanctioned recipients to notify the county that they wanted their case reviewed for improper handling of a self-initiated program issue. This review process raised the issue of how to notify recipients of their right to file a claim. To reach both current and former recipients, the state used a quarterly mailing to all Medicaid recipients as the means to give notice that recipients could file a claim requesting a self-initiated program review. The state required counties to post notices explaining the settlement and claims process. It required all counties using nonwelfare offices (such as check-cashing centers or food stamp distribution centers) to mail those offices notices of the claims process for obtaining a self-initiated program review. The state also required counties to flag cases that might have been mishandled, pending receipt of the remedies guidance.

Just before the legal team completed negotiations with the state to resolve the issues set forth in its demand letter, the team and organizers at grass-roots and other organizations such as LIFETIME did extensive outreach, public speaking, and educational presentations about the self-
initiated program problems and the legal resolution. Through these activities they found that, with rare exception, no one recalled receiving the mailing containing the notice that recipients could file a claim requesting a self-initiated program review. LIFETIME peer advocates discovered that most counties had not put up the required posters, nor had they posted them at food stamp outlets. College counselors reported that they had not received the posters or claim forms. When clients and advocates asked for the claim form from welfare reception and information desks, workers said that they knew nothing about it and insisted that they had received no information about self-initiated program problems. In short, failure to disseminate the 'self-initiated program claim materials was widespread, and the lack of county worker awareness of the self-initiated program issues was disturbingly high.

Because counties were not implementing the legal resolution of the self-initiated program issues, the legal team demanded an extension of time and the swift issuance of a letter to the counties informing them that they must follow the self-initiated program guidance. After weeks of negotiations, the state granted the requested extension. It also sent a letter that resulted in counties, for the most part, meeting the requirements to post notices and provide claim forms.24 However, the problems did not stop after the notices were posted and claim forms were mailed. Advocates and organizers heard routinely that counties were failing to process self-initiated program review requests timely. Caseworkers still did not apply the correct criteria in evaluating whether a student qualified as a self-initiated program participant or for available supportive services. Many caseworkers denied self-initiated program claims on the same incorrect basis as the original denial. Several counties did not use the state notices of action. Students received self-initiated program claim denials on letters that did not contain their hearing rights. Some workers verbally denied the claims and told students that they were not allowed to appeal because they had already gone through a “review.”

Because of these ongoing problems, advocates and grass-roots organizations continue to conduct outreach to students about their rights. Although resolving the issues raised in the demand letter was exceedingly frustrating, the legal team believes that county implementation problems would have occurred regardless of whether the case was resolved administratively or in court. The real problem, discussed below, was the fallout from the devolution of responsibility to the counties and the state’s concomitant passivity in monitoring county implementation.

The real problem was the fallout from the devolution of responsibility to the counties and the state’s concomitant passivity in monitoring county implementation.

V. The Challenges of Responding to Devolution

The complete statewide failure to implement correctly the self-initiated program rules, although created in part by antagonism against welfare-supported education programs, typifies the result of devolution that advocates in California are seeing repeatedly. With the shift in responsibility from the federal government to the state under welfare reform, the state experienced an upheaval when it had to develop and implement the TANF provisions, and promulgating proposed, let alone final, regulations on welfare-to-work took over a year.25 Many statewide issues remain unresolved.


25 In the interim the state Department of Social Services issued all-county letters as emergency regulations. Because it generated the guidance under an emergency exception to the regular Administrative Procedure Act process, the letters did not go through prior public comment.
Layered on the state issues is the need for the state's 58 counties to develop their own plans and written policy. Many small counties do not have the staff needed to develop and issue written policies. As the problems in implementing the self-initiated program law demonstrate, counties are unclear on how and when to draw the line between permissible discretion and the limitations imposed by law. Local policies do not appear to go through legal review by county counsel or be subject to public input. Counties are also struggling to obtain and retain employment service workers, and workers find it hard to attend training sessions when serving understaffed caseloads.

Based on advocates' experience, the state Department of Social Services unfortunately has taken a permissive stance regarding county implementation; it represented to the Employment Law Center and other advocates that it could not require anything of counties not specifically mandated in the law. The department also represented that by providing technical assistance on request and sending clarifying all-county letters, it had met its obligation to ensure correct implementation of the law. At this stage, according to the department, it is not inclined to have the counties submit their policies to the state for review because the law does not require this and no staff is available to review the policies.

The advocacy community is struggling to find the most efficient ways to respond to the state's "hands off" monitoring position. Some of its actions include:

- working with the state to resolve identified deficiencies in county practices,
- requesting the formation of and participating in state task forces addressing specific issues,
- continuing to file Public Records Act requests to obtain information in order to review written policies,
- developing surveys to obtain feedback on local policies and practices,
- reviewing statewide and county-specific welfare-to-work and civil rights data,
- using a checklist of policy and procedure issues,
- conducting local advocacy aimed at counties on welfare issues,
- increasing involvement of grass-roots organizations, and
- increasing outreach to and education of public aid applicants and recipients.

VI. Other Avenues to Education Under CalWORKs

Although qualifying as a self-initiated program student is by far the best avenue for a CalWORKs recipient who wants to pursue an education, CalWORKs offers other paths to education. Some of the following approaches, although California specific, may be useful to advocates in other states.

A. Remedial Education

CalWORKs provides that counties must assign to remedial education participants who lack (1) a high school diploma or a GED (general educational development) certificate, (2) basic literacy or math skills, or (3) English-language skills for basic education "as appropriate and necessary for removal of the individual's barriers to employment." The county is required to have a written policy explaining how workers will determine whether basic education is a required assignment. The county is required to have a written policy explaining how workers will determine whether basic education is a required assignment.

This policy should include language on when the county considers the educational deficiency a "barrier to employment" as well as how the county determines when basic education must be assigned as "appropriate and necessary" to remove these barriers. The state indicated to the Employment Law Center and other advocates that it agreed that counties also should have policies regarding when English as a second language and other remedial courses might be assigned as a "stand-alone" activity and when they should be supplemented by other activities.

27 SUBL. AIMAN. POLY & PROCS. § 11-501.3 (Feb. 10, 1999); All County Letter 00-08, supra.
B. “Referred” Education

The county may refer CalWORKs recipients, after assessing them, to a welfare-to-work activity that involves education or training. When recipients are “referred,” various educational assignments may be counted as welfare-to-work activities, including job skills training, vocational education and training, and general education. However, counties may assign these activities only when the education is “directly related to employment.” Every county must supply an adequate range of welfare-to-work activities “to ensure each participant’s access to needed activities and services to assist him or her in seeking employment” and “to provide education and training the participant needs to find self-supporting work.”

This CalWORKs section qualifies that the education needed to become employed means training leading to self-supporting work. Thus education or training would be appropriate for parents with a history of low-wage jobs that do not pay enough to move the family off welfare or that are unstable and result in the family cycling on and off public aid. Research by the Department of Social Services demonstrates that a work-first approach is not moving families off welfare.

One problem that prevents parents from being referred to education is that counties are confused about the use of state versus federal work activities. State welfare-to-work options include activities that are not considered work activities under federal law. Consequently many California counties are limiting education to those activities that count toward federal participation rates. However, because California chose to offer more educational options than are available under federal law, counties are required to follow the CalWORKs rules. Thus the length and nature of the educational program should be based not on the shortest route to any job but on an individual assessment of what the recipient needs to become employed in self-supporting work.

C. Education After Training Time Expires

Several ways to receive education and training through CalWORKs are available after the 18- or 24-month welfare-to-work training time expires.

1. Education for Exempt Volunteers

CalWORKs exempts disabled recipients from work requirements. To qualify, the recipient must have a condition that is expected to last at least 30 days and that significantly impairs the recipient’s ability to be regularly employed or participate in welfare-to-work activities.

Any month in which a CalWORKs recipient is exempt as disabled does not count against the recipient’s 18- or 24-month training time. These months do not count toward the 60-month lifetime limit on aid either.

---

28 See supra note 10 and accompanying text.
30 See CAL. WELF. & INST. CODE § 11322.6 (Deering 1999 & Supp. 2000).
31 See id. § 11322.7; CAL. MAN. POLY & PROCS. § 42-716.3 (Sept. 13, 1999).
34 See CAL. MAN. POLY & PROCS. § 42-711.441 (Sept. 13, 1999).
35 See id. §§ 42-710.61 (July 1, 1998), 42-712.51 (Sept. 13, 1999).
However, even if they are exempt, CalWORKs parents may volunteer for a welfare-to-work activity. The law defines a volunteer as “a CalWORKs applicant or recipient who is not required to participate in the Welfare-to-Work Program, but chooses to participate.”37 As an exempt volunteer, the individual is not required to participate for the full number of hours.38

The county must provide supportive services (i.e., child care, transportation, and other “ancillary” costs) necessary for participants to take part in the program or activity to which they are assigned or to accept employment.39 The definition of “volunteer” makes it clear that a volunteer is a participant and therefore entitled to support services. Exempt volunteers are not subject to sanctions as long as they remain exempt.40 However, if exempt volunteers are not making satisfactory progress or fail to participate in the welfare-to-work activity without good cause, the county may limit their future participation by serving other participants first.41

Because qualifying for a disability exemption requires the recipient to have a condition that significantly impairs the recipient’s ability to be regularly employed or participate in welfare-to-work activities, parents seeking to qualify should attempt to establish that accommodating their disability leaves them with little or no time to gain job skills. Three common situations occur:

- The parent cannot participate full-time in the required hours of welfare-to-work activities or employment or both, whether accessing skills training or accessing services to address the disability.
- The parent can participate for the full requirement of hours but only because most of the hours are comprised of taking courses to help the parent overcome or limit the effects of the disability.
- The parent can participate in training for the full requirement of hours but only because the county is allowing a large number of hours for extra study time needed because of the disability.

Our experience is that parents who can verify that they cannot participate full-time do not appear to be having problems becoming exempt volunteers.** The latter...
two situations pose the most problems for CalWORKs recipients. The statute and regulations provide for referrals to “special programs” for individuals with disabilities and count “special tutorials” as a work activity.\footnote{See CAL. WELF. \& INST. CODE § 11325.25 (Deering 1999 \& Supp. 2000), CAL. MAN. POL'Y \& PROCS. § 42-711.58 (July 1, 1998) (including special programs as those for learning disabilities or medical problems); CAL. MAN. POL'Y \& PROCS. § 42-711.56 (July 1, 1998) (including special programs such as those for mental health problems). All County Letter 99-32, \textit{supra} note 21 (regarding special tutorials).} Therefore counties are inclined to view 32 hours as full participation, regardless of the content of the person’s program or the person’s ability to receive useful training within the time limits. Both situations are cases in which the individual, in order to have the individual’s disability accommodated to allow for an “even playing field” with nondisabled recipients, would need to have the “extra time” to complete the training program not counted against either the training or the individual’s lifetime clock.\footnote{The Americans with Disabilities Act prohibits public entities, such as the Department of Social Services, from discriminating against individuals with disabilities, Americans with Disabilities Act, Title II, 42 U.S.C. §§ 12101 et seq. (1999) It prohibits, e.g., denying individuals who are otherwise eligible for the services an opportunity to participate in or benefit from the benefit or services and providing disabled individuals with a service that is not as effective in affording an equal opportunity to obtain the same result or reach the same level of achievement as that provided to others. See 28 C.F.R. § 35.130 (1999).} Over two years into the program’s implementation, however, the state has not yet developed a disability accommodation policy.\footnote{The Employment Law Center requested a disability policy soon after CalWORKs was implemented. The state indicated to the center that it recognized the need for such a policy but that its staff was involved in other implementation issues. By the end of 2000, the state’s Learning Disability Taskforce is scheduled to develop protocols for serving recipients with learning disabilities. See California Dep’t of Soc. Servs Advisory Workgroup on Learning Disabilities Workplan (approved June 8, 2000).} Exemptions may be viewed as a disability accommodation. Granting an exemption is a reasonable accommodation because it permits individuals to receive the services needed to benefit from full participation, complete a program or both without a time-limited program’s constraints inconsistent with their disability needs. Granting an exemption is also an accommodation that would not require any modification of CalWORKs.\footnote{See Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq (reasonable accommodations), 12131 et seq. (reasonable modifications) (1999).}

2. Long Training Periods for Persons with Disabilities

If persons with disabilities are unable to obtain an exemption, they may argue that, as an accommodation, they need more time to allow them to complete their education and training program. This accommodation would require a modification, but not an unreasonable one, of CalWORKs.\footnote{Allowing individuals additional time is within the framework of the statute. E.g., exempt volunteers are eligible to receive services outside of the time limits; education and training may be continued after the 18- or 24-month training time limit, such as when a break in aid occurs or as a component of community service. \textit{See CAL. WELF. \& INST. CODE § 11454.5 (Deering 1999 \& Supp. 2000), CAL. MAN. POL'Y \& PROCS. § 42-712.41 (Sept. 13, 1999) (listing categories that are exempt without counting against the time limits); CAL. WELF. \& INST. CODE § 11320.3(c) (Deering 1999 \& Supp. 2000), CAL. MAN. POL'Y \& PROCS. § 42-701.2(v) (Sept. 13, 1999) (regarding volunteers being able to participate).} CAL. MAN. POL'Y \& PROCS. § 42-712.51 (Sept. 13, 1999) (clarifying that when an exempt person (whose time otherwise would not be running) volunteers, the clock remains stopped); CAL. WELF. \& INST. CODE § 11320.1(c) (Deering 1999 \& Supp. 2000), CAL. MAN. POL'Y \& PROCS. § 42-710.31 (July 1, 1998), All County Letter 99-111, California Work Opportunity and Responsibility to Kids (CalWORKs) Welfare-to-Work (WTW) Program: Questions and Answers Regarding Community Service, No. 4 (Dec. 27, 1999) (also available at \url{www.dss.ca.gov/getinfo/ac99/99-111.PDF}) (Providing for welfare-to-work training activities after the 18- or 24-month clock has run if a break in aid occurred).} Such an accommodation would further the purposes of the statute by allowing persons with disabilities to gain skills needed for employment.
However, a time extension is less desirable than the exemption; persons receiving an extension would obtain more training time, but the state is unlikely to extend their lifetime time limit.48

3. Training as Part of Community Service

Under CalWORKs nonexempt recipients may participate in welfare-to-work activities designed to lead to employment, but they face a time limit of 18 or 24 cumulative months of aid, depending on when they first started receiving aid.49 After that time, parents must work in unsubsidized employment, participate in community service, or face a sanction.50 Community service is intended to provide or enhance employment skills and involves work experience with public entities or nonprofit organizations.51 Community service assignments may include education or training activities if required for or relevant to the placement.52 Participants may find their own community service placements.53 Whether placed or self-selected, the participant may work with the employer to obtain documentation that additional education would be relevant or required.

4. Training After a Break in Receiving Aid

Adult members of a family that stops receiving aid for at least one month may requalify for training time or as a self-initiated program student upon return to aid.54 This gives them additional access to aid-supported education and training. The county welfare department determines whether to require the individual to participate in community service (which has few education and training options) or in welfare-to-work activities upon return. The department must have a written policy on the standards it uses to place participants under these circumstances.55

5. Volunteering to Perform Additional Hours

Although CalWORKs sets out the required number of hours of participation in welfare-to-work activities, recipients may perform additional hours.56 If they volunteer to do so, they may participate in education or training programs and receive supportive services (e.g., child care, transportation, or books) to allow participation in these voluntary activities. However, the state has no policy guidance or regulations on determining a welfare-to-work plan for volunteers, so

---

48 In advocates' meetings with the Department of Social Services on other issues in summer 2000, the state's legal counsel gave an initial (but tentative) opinion that the agency would be exceeding its powers if it extended the 60-month lifetime limit to situations other than those listed by the legislature.


52 See All County Letter 99-111, supra note 47, No. 2.

53 See id., No. 5.


55 See All County Letter 99-111, supra note 47.

56 See id., No. 4(d). Single-parent families have a 32-hour requirement; two-parent families have a 35-hour requirement. See Cal. Welf. & Inst. Code § 11322.8(a), (b) (Deering 1999 & Supp. 2000). Two-parent families are most likely to volunteer for additional hours, particularly if one parent meets most of the hours, allowing the other parent to volunteer for extra hours.
whether recipients may choose their own program for which to volunteer or whether the county must determine the program after an assessment is unclear.

6. Postemployment Services

California counties have the option of providing job retention services to current or former welfare recipients who become employed and need assistance retaining employment. Whether the county accepts this option and what services it chooses to provide must be set forth in the county CalWORKs plan and in the county’s written policy on its standards for local components of CalWORKs. Counties may provide job-retention services for up to the first 12 months after aid ceases. Such services are available only if they are not provided by the employer, the entity that arranged the job placement; are not available from other sources; and are needed for the individual to retain employment. Education and training, if they meet the last criteria, should be available in counties providing job retention services.

VII. Pursuing Education Outside of TANF

The constraints of TANF and the stress of welfare reform have forced many parents—particularly those in four-year programs such as nursing and teaching, which are in-demand occupations that command self-supporting wages—to forgo welfare to pursue education. Options for CalWORKs students to continue their education or training beyond the 18- or 24-month time limit include taking a sanction, work-study or other part-time employment, student financial aid strategies, the Earned Income Tax Credit, and individual development accounts.

A. Taking a Sanction

California does not apply a “full-family sanction” when the mandatory TANF participant fails to participate in welfare-to-work activities; it sanctions only the nonparticipating adult. Lost income due to the sanction ranges from $90 to $190, depending on the size of the assistance unit. Currently in California the TANF sanction does not result in a decrease in the family’s food stamps.

Some TANF recipients, faced with quitting school, choose not to comply with workfare and take a sanction instead. If the mandatory participant is sanctioned, the children would continue receiving aid, and the months during which the adult is sanctioned would not count against either the adult’s training or lifetime limits. The adult participant may continue with the education or training, but the

58 See id. § 11-501.3 (Feb. 10, 1999) (requiring written county policy).
59 See CAL. WELF. & INST. CODE § 11323.2(b) (Deering 1999 & Supp. 2000).
60 See id.
61 The California grant structure provides for incremental increases in aid with each additional person, with the largest increment being the difference between a one- and two-person household ($190) and the smallest being the difference between a nine- and ten-person household ($90). See id. § 11450 (setting forth the grant structure); All County Letter 00-50, Increases to the Maximum Aid Payment (MAP) and Minimum Basic Standard of Adequate Care (MBSAC) Levels in the California Work Opportunity and Responsibility to Kids (CalWORKs) Program (July 31, 2000) (also available at www.dss.ca.gov/getinfo/alc00/pdf/00-50.PDF) (listing the most recent maximum aid payment).
62 However, the family will not receive an increase in the food stamp allotment to reflect the decrease in the household income. See 7 U.S.C. § 2017(d)(1) (1999). See also 7 U.S.C. § 2015 (b)(1) (providing that no increase in household food stamp benefits is permitted during a disqualification period resulting from an intentional program violation (in other work program) committed by an individual member of the household).
63 See CAL. WELF. & INST. CODE § 11327.5(c) (Deering 1999 & Supp. 2000), CAL. MAN. POLY & PROCS. §§ 42-721.43 (July 1, 1998) (providing that children continue receiving aid); CAL. WELF. & INST. CODE § 11454(d)(3) (Deering 1999 & Supp. 2000), CAL. MAN. POLY & PROCS. §§ 42-721.411–412 (Sept. 13, 1999) (providing that the months during which the adult was sanctioned do not count against either the adult’s training or lifetime limits).
The College Option in California

household would no longer be eligible for supportive services related to the adult’s activities.64

Taking a sanction is a good option for students who have supportive services through sources other than CalWORKs.

The constraints of Temporary Assistance for Needy Families and the stress of welfare reform have forced many parents, particularly those in four-year programs, to forgo welfare to pursue education.

(e.g., campus-based day care) and for students with more than one child because they experience a smaller loss in benefits relative to students with one child.

B. Work-Study and Other Part-Time Employment

Work-study is by far the best employment option for CalWORKs and other TANF students. As federal financial aid, work-study income is exempt from being considered income for purposes of welfare eligibility.65 If eligible for federal student financial aid, students at community colleges and four-year universities may access federally funded work-study jobs through their campus financial aid departments. California’s community colleges also offer state-funded work-study jobs to CalWORKs students, regardless of their eligibility for federal student financial aid. However, if sanctioned, these students would no longer be eligible for this service.

Work-study programs not only allow CalWORKs and other TANF students to earn much-needed income for their families but also give them critical work experience in their field of study. For example, through partnerships with union-based apprenticeship, training, and job placement programs and work-study contracts with off-campus employers, some community college CalWORKs programs have directly linked work-experience programs to stable, career-path employment for their students. This is a particularly important benefit, given the effectiveness of combining education and training with hands-on work experience.66

Many work-study jobs have the added convenience of being on campus, precluding the need for costly and often time-consuming commutes. This is an important consideration for student parents who often rely exclusively on public transportation.

Despite these benefits, work-study is an underused resource, due in part to low-income students failing at alarming rates to access financial aid benefits for which they are eligible. As a result, many never receive work-study awards.67 Four-year universities lack the funding and staff to coordinate work-study programs specifically for CalWORKs students.

C. Student Financial Aid Strategies

Although student financial aid is another valuable resource for CalWORKs students who want to continue their educ-


67 An analysis of community college financial aid records found that 96,000 welfare recipients statewide who were enrolled in vocational programs had not received Pell grants in 1999 and that 34,000 of those had not requested a state fee waiver, the minimum financial aid available to community college students. See Jill Leovy, Financial Aid Eludes the Poorest Students, L.A. Times, July 11, 1999, at Al-3.

68 Under CalWORKs only community colleges, not four-year universities, receive funding to create campus-based CalWORKs programs and provide work-study employment for CalWORKs students.
cation outside of TANF, many such students fail to apply for financial aid. Thus distributing information about the availability of fee waivers, Pell grants, student loans, and scholarships is a crucial step in retaining current CalWORKs students and in recruiting potential students. Because many CalWORKs students are ineligible for financial aid due to having defaulted on prior student loans, distributing information on how to rehabilitate defaulted loans is also critical.

At the campus level, low-income student parents should be counseled on requesting an adjustment to the cost of their attendance. Because the typical financial aid package does not reflect the cost of having dependent minors, most universities allow eligible students to adjust the cost of their attendance to reflect extraordinary expenses (e.g., child care and added housing expenses for students with children) that the typical student does not incur. Students should request a recalculation of their financial need that reflects the loss of welfare benefits due to a sanction. With their financial need adjusted upward, CalWORKs and other TANF students may become eligible for additional financial aid. If funds are available, financial aid administrators have the discretion to shift additional resources to CalWORKs and other TANF students who are in danger of dropping out of school.

At the county level, resources also may be provided to help CalWORKs parents access ongoing education and training. In California, county incentive dollars for caseload reduction may be used to provide education or training to low-income parents who meet income eligibility guidelines, for example, CalWORKs parents moving off welfare into low-wage work.69

D. Earned Income Tax Credit

The Earned Income Tax Credit is a valuable resource for CalWORKs and other low-income students with children. Workers who raised more than one child in their home and had family income of less than $30,580 in 1999 may obtain an earned income credit of up to $3,816.70 Thus a student parent with two children working 20 hours per week at $10 per hour would earn $10,800 for the year and would receive a $3,816 credit. By filing a W-5 form with their employer, students may receive the Advance Earned Income Tax Credit and have a portion of their estimated tax return added to each paycheck.71 The Earned Income Tax Credit is exempt from being considered income for purposes of determining welfare eligibility.

E. Individual Development Accounts

Individual development accounts are dedicated savings accounts that, under the TANF statute, may be used only for homeownership, education or job training expenses, or capitalizing a small business.73 Recipients participating in these programs may receive welfare-to-work credit for attending workshops such as credit counseling, budgeting, banking, and money management. Participants’ savings may be matched through a combination of private and public sources, which may include TANF or maintenance-of-effort funds.74

---

71 See id. § 3507.
Individual development accounts are particularly appropriate for CalWORKs and other TANF students with longer-term educational needs, for example, students in four-year programs, students who have learning disabilities and need more time to complete their degrees, and parents who lack a high school degree or GED certificate and are ineligible for student financial aid. Matching funds for individual development accounts are also exempt income for purposes of determining welfare eligibility.75

VIII. Postsecondary Education as a High-Wage Job Strategy: An Example

Together the strategies and programs discussed in the previous section form an integrated approach to helping CalWORKs and other low-income students achieve their longer-term educational goals and attain higher-wage jobs.76 To illustrate, consider the case of Maria, who has a history of earning low wages and is enrolled in a community college to attain a bachelor’s degree in nursing. Maria came to LIFETIME for advice on how she could finish college with only 24 months of welfare-to-work benefits remaining, but three years left to complete her degree.77

The key for low-income parents in education or training programs of longer than 24 months is to develop dual goals: a short-term goal to satisfy CalWORKs requirements within the 18 or 24-month training time limit and a long-term educational goal that includes identifying the appropriate strategies needed to achieve that goal. An effective short-term goal lays the foundation for the long-term educational objective. Maria had a short-term goal of not signing a welfare-to-work plan in order to delay the start of her 24-month training time limit. As a result, she was on the verge of being sanctioned and was paying $100 a month in commuting costs.

Peer advocates first advised Maria against taking a sanction in order to become eligible for reimbursement of her commuting costs and other supportive services. With such services, Maria could divert the funds she used for commuting to rehabilitate a student loan in default and regain her eligibility for financial aid and qualify for a Pell grant of up to $3,100 for the 2000–2001 school year. With financial aid, full welfare benefits, and supportive services for 24 months, Maria had a plan to finish her associate’s degree and prepare to transfer to a four-year nursing program.

The next step was to develop a long-term plan to help Maria complete her bachelor’s degree in nursing. Financial aid would help somewhat, but Maria also had child care and transportation costs that welfare would no longer cover and that federal financial aid formulas do not consider. Peer advocates advised Maria to enroll in an individual development account program, which offered two-for-one matching funds on participants’ savings. Through this program, Maria would develop a plan to finance her educational goal and save up to $2,000, which the program would match with $4,000, giving her a total of 56,000 for educational expenses. To achieve a savings goal of $2,000 by the end of her 24-month time period, Maria needed to save $83 per month for the next two years. To obtain her savings match, Maria could work approximately 10 hours per week, earning $400 per month in work-study income and $1,610 per year in Earned Income Tax Credit, all of which would be exempt income.

By using strategies and programs that are currently allowable under state and federal welfare law, Maria developed short- and long-term goals to earn her degree and attain higher-wage employment. After signing her welfare-to-work

75 See CAL. WELF. & INST. CODE § 11155.2 (Deering 1999 & Supp. 2000) (exempting Individual Development Accounts as a resource and exempting interest generated from such accounts if the interest is retained in the account).

76 A targeted high-wage job strategy matches the demand for well-paying jobs with a supply of skilled labor. A labor market analysis is used to identify industries that are growing and the high-wage jobs within those industries that need skilled workers. See JOHNSON & LESSARD, supra note 66, at ch. 2.

77 We changed the student’s name for confidentiality purposes.
The College Option in California

plan, she was able to rehabilitate her defaulted student loan and requalify for financial aid. Through her work-study job, Maria gained critical career experience and much-needed income. Through the individual development account program, she learned money management skills. Whereas before Maria had subsisted on welfare, she now has additional monthly resources of $827.50—$400 in work-study income, $127.50 in Advance Earned Income Tax Credit, and approximately $300 in student financial aid. These resources will be critical to her long-term education and employment goals. By using post-secondary education as a high-wage job strategy, Maria will be able to attain work as a nurse and earn self-sufficient wages.

IX. Postsecondary Access Through U.S. Department of Labor Welfare-to-Work Programs

The U.S. Department of Labor has a welfare-to-work program that may be used to cover the education and training of current and former CalWORKs recipients, including those who are subject to a sanction, who reached their time limits, or who earned too much income to remain on the welfare program. This program also provides supportive services.78 Those who are working have unlimited education and training services available to them; parents who are not working may receive six cumulative months of education and training services.79

The Workforce Investment Act of 1998 also provides job training and education for eligible participants, with a service priority (if funding is limited) for public aid recipients and low-income individuals.80 The Act permits the payment of supportive services (e.g., transportation and child care) if no other resource is available and the services are necessary for participation.

X. Policy Recommendations for TANF Reauthorization

The TANF statute currently allows states the flexibility to support access to post-secondary education.81 States may use both TANF and state maintenance-of-effort funds to support postsecondary education, and neither federal work participation requirements nor time limits need prevent states from developing policies and committing resources in support of postsecondary education for low-income families.82 Although states have broad discretion in their use of TANF funds, the restrictions on being able to count post-secondary education in federal participation rates are significant and send a clear signal to the states that higher education is not valued as highly as other welfare-to-work activities. To protect and encourage access to postsecondary education in the reauthorization of the TANF legislation in 2001–2002, these policy recommendations may be of use to advocates nationwide:

- Allow states to count parents in post-secondary education toward federal work participation rates either as a work preparation activity or concurrently with work.
- Stop the clock on both the relevant state training time limit and the 60-month federal lifetime limit for parents participating in postsecondary education.
- Give states the option of allowing participation in bachelors degree programs to count as a welfare-to-work activity.

---

78 The program covers current and former TANF recipients if they received assistance for at least 30 months (whether consecutive or not), if they are within 12 months of reaching their TANF time limit, or if they have exhausted their receipt of TANF due to time limits. See 42 U.S.C. § 603(a)(5)(C)(ii) (1999).
79 See id. § 603(a)(5)(C)(i).
- Allow homework and study time to count toward weekly work requirements.
- Expand federal funding for individual development accounts in support of postsecondary education for TANF participants.

That “work first” is not moving families out of poverty is increasingly clear with the implementation of TANF at the state level. Although some states have been exceptionally creative in protecting access to postsecondary education for TANF parents, federal restrictions are numerous and incentives are few. California’s experience and the grass-roots and legal advocacy required to protect parents’ access to postsecondary education demonstrate the need on the state and federal levels for clearly articulated policies that emphasize “education first.” This is the challenge facing advocates in the upcoming reauthorization of TANF in 2001-2002.

Note on the Authors

Diana Spatz is executive director of LIFETIME (Low-Income Families’ Empowerment Through Education), 132 E. 12th St., Oakland, CA 94606; 510.452.5192; dspatz@hotmail.com. Jodie Berger is project director of the Welfare Advocacy Project, Employment Law Center, 1663 Mission Street, #400, San Francisco, CA 94103; 415.864.8848, ext. 254; jberger@employmentlawcenter.org. Tamu K. Hamed is a law student at Golden Gate University School of Law and LIFETIME board member, 188 Moss Way #6, Oakland, CA 94611; 510.547.1110; tkhamed@alum.berkeley.edu.