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Our Commitment to Youth

National Center on Poverty Law
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Politics or Health: Sex Education in the Spotlight

If you ask the American public what type of sexuality education they think young people—including their own children—should receive in school, a comprehensive approach that includes strong messages about abstinence and information about contraception wins hands down. This result comes not just from polling for liberal groups or Democratic candidates; a poll on this subject commissioned by the conservative organization Focus on the Family found that some 75 percent of parents want their children to learn both messages. (Zogby International 2004 Survey on Parental Opinions of Character- or Relationship-Based Abstinence Education vs. Comprehensive (or “Abstinence First,” Then Condoms) Sex Education: Graphs of Major Findings 16 (2004) (chart 14).) Yet the way our federal government spends tax dollars to help youth make decisions about sexuality is in direct opposition to the general public’s preference. Over the past twenty-five years, the federal government spent more than $1 billion on programs that specifically exclude information about contraception—how effective it is and how to use or access it. (See Sexuality Information and Education Council of the United States, Federal Spending for Abstinence-Only-Until-Marriage Programs in the United States (1982–2006), at www.siecus.org/policy/states/2004/federalGraph.html (last visited July 7, 2005).)

Every major public health entity in this country and around the globe including the American Public Health Association, the American Medical Association, and the World Health Organization opposes the approach generally known as abstinence only until marriage. (See American Public Health Association, Policy Statement, 9309: Sexuality Education (1993); American Medical Association, Policy Statement, Sexuality Education, Abstinence, and Distribution of Condoms in Schools (1999); Patricia A. Butler, Promoting Sexual Health, Progress in Reproductive Health Research No. 67, at 4 (UNDP/UNFPA/WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction, Geneva, Switzerland) (2004).) These entities stand on firm ground because not a single, sound peer-reviewed study has documented long-term positive effects of these programs on young people’s behavior. Eleven states’ evaluations show no positive impact. (For more information on each of these eleven states and others, see Sexuality Information and Education Council of the United States, State Profiles (2004): A Portrait of Sexuality Education and Abstinence-Only—Until—Marriage Programs in the United States (2005). at www.siecus.org/policy/states/index.html.) Researchers at Columbia and Yale Universities have documented harm in the form of decreased contraceptive use and increased rates of oral and anal sex among young people who have taken a pledge to remain a virgin until marriage. (See Peter Bearman & Hanah Brückner, Promising the Future: Virginity Pledges and the Transition to First Intercourse, 106 American Journal of Sociology 859–912 (2001); Peter Bearman & Hanah Brückner, After the Promise: The STD Consequences of Adolescent Virginity Pledges, 36 Journal of Adolescent Health 271–78 (2005).)

Conversely, a comprehensive approach that includes abstinence and contraception information has been found to delay the onset of sexual intercourse, reduce the number of sexual partners, and increase condom and contraceptive use. (See Douglas Kirby, National Campaign to Prevent Teen Pregnancy, No Easy Answers (1997); id., Emerging Answers: Research Findings on Programs to Reduce Teen Pregnancy (2001); Department of Health and Human Services, The Surgeon General’s Call to Action to Promote Sexual Health and Responsible Sexual Behavior 15 (2001).) Further and most heartening, these programs do not increase sexual activity. (See Kirby, No Easy Answers, supra at 31.) Translation: win-win.

Some believe that marriage is the solution—that if we can just get people to marry, their sexual health is secured and their economic concerns are forever lifted. Yet the risks of early marriage are most evident in the fragile nature of these families. According to a study from the Center for Law and Social Policy, teens who wed tend to divorce at rates significantly higher than those who wait until beyond their teen years, and they experience more violence in the relationship. (Naomi Seiler, Center for Law and Social Policy, Is Teen Marriage a Solution? 12 (2001).) In teen marriages a second birth tends to follow quickly after the marriage, compounding the economic difficulty a divorce may cause.

Young people who have a full knowledge of how to protect their sexual health are more likely to respond in ways that create a better future for themselves. Young people who delay childbearing and family formation are more likely to finish their formal education. We also know that young people who become parents too soon are more likely to experience poverty, and so, too, will their children.

Neither marriage nor an abstinence-only approach is sufficient to meet our youth’s needs. Not that marriage and abstinence are bad, they simply are not the only tools we need in the toolbox for life.

A less extreme, publicly supported and evidence-based approach—comprehensive sexuality education—serves our nation best.

For more information, visit www.nonewmoney.org or www.siecus.org.

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Residential Treatment Centers: Not a Solution for Children with Mental Health Needs

Parents of children with mental health needs do what any parent would when a child is in trouble: they look for help. When they do so, families in crisis are too often seduced by the high-gloss marketing efforts of a well-financed industry promoting an intervention—residential treatment center care—for which scant evidence of long-term effectiveness exists and significant potential for abuse and neglect is evident. (Regarding scant evidence of long-term effectiveness, see, e.g., Barbara J. Burns et al., Effective Treatment for Mental Disorders in Children and Adolescents, 2 CLINICAL CHILD AND FAMILY PSYCHOLOGY REVIEW 199, 209–10 (1999): regarding the more than forty published reports of abuse within residential treatment centers, see, e.g., Scott Higham & Sewell Chan, Poor Care, Abuses Alleged at Riverside, WASHINGTON POST, July 15, 2003, at A1.)

Residential treatment centers are secured facilities for children and adolescents with significant behavioral, emotional, and mental health needs. Up to 50,000 children a year are now housed in residential treatment centers. (Kathleen J. Pottick & Lynn A. Warner. Nearly 66,000 Youth Live in U.S. Mental Health Programs, LATEST FINDINGS IN CHILDREN’S MENTAL HEALTH, Summer 2003, at 1.)

Such an industry seemingly should be held accountable or at least heavily regulated. Regrettably, for kids with serious emotional disturbance, their parents, and advocates—neither is the case. Although highly public media accounts have documented abuse and neglect in these facilities, little or no public oversight is in place. (See generally Anthony Meza-Wilson & Christy Harrison, Safe Choices for Troubled Teens (posted Aug. 12, 2004), at www.askquestions.org/articles/teens/SafeChoices.pdf.) The lack of public oversight of residential treatment centers also means that the full scope of the abuse and neglect problem is unknown and that the problem may be even more widespread than reported. A bill—End Institutionalized Abuse Against Children Act, H.R. 1738, 109th Cong. § 1 (2005)—introduced in Congress in April 2005 would add regulations where few exist.

These harms come at great cost—facilities charge up to $90,000 per year per child (see Higham & Chan, supra) and eat up nearly one-fourth of the national outlay on child mental health care. (U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL 169 (1999).) By funneling children with mental illnesses into the residential treatment center system, states undercut more effective community-based mental health services.

Poor children are disproportionately institutionalized in residential treatment centers. Medicaid and state mental health agencies pay for approximately 31 percent of residential treatment center care, and other public agencies, often the domain of children in poverty, pay for another 50 percent. (For the most recent data, see SURVEY AND ANALYSIS BRANCH, CENTER FOR MENTAL HEALTH SERVICES, SURVEY OF MENTAL HEALTH ORGANIZATIONS AND GENERAL HOSPITAL MENTAL HEALTH SERVICES (1998). Child-serving agencies place many children in residential treatment centers that are far from home; this makes having meaningful contact with their children difficult for families of limited means and reduces the efficacy of treatment and increases its cost. (Scott Higham & Sewell Chan, District Reexamines Out-of-Town Centers, WASHINGTON POST, July 16, 2003, at A13; Potential Impacts of Proposed Budget Cuts to California’s Juvenile Justice-Involved and At-Risk Youths with Mental Health Problems, FOCUS (National Council on Crime and Delinquency, Oakland, Cal.), July 16, 2002, at 2.)

There is hope. Children’s mental health needs can be met in ways that do not require placement outside of the child’s community, in ways that do not put the child at risk, and in ways that provide better services and cost less. Community-based alternatives—such as wraparound and therapeutic foster care—produce better short- and long-term results and are less disruptive to children and families.

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Help for Immigrant Youth?: The Dream Act

The Development, Relief, and Education for Alien Minors (Dream) Act is a bipartisan federal legislation that would permit high school graduates who came to the United States as children and have lived in the United States for at least five years to apply for temporary “conditional” legal status. Once their application is approved, such students would be able to make their status permanent by attending college or serving in the military for at least two years. The Dream Act also would eliminate a federal provision—8 U.S.C. § 1623—that discourages states from providing in-state tuition rates to immigrant students. Since 2001, nine states—California, Illinois, Kansas, New Mexico, New York, Oklahoma, Texas, Utah, and Washington—have enacted legislation tailored to comply with Section 1623 while permitting most undocumented immigrant students who have attended and graduated from their schools to pay in-state tuition. A majority of undocumented immigrants live in these nine states. As of July 2005, only one legal challenge has been mounted to these state laws; the court dismissed the case, in part because plaintiffs—students who were not offered in-state tuition—did not have standing and in part because they had no private right of action under Section 1623. (Day v. Sebelius, No. 04-4085—RDR (D. Kan. July 5, 2005) (order and memorandum) (Clearinghouse No. 55,894.)
The Dream Act would transform the lives of the affected students and allow the U.S. Department of Homeland Security to focus its overtaxed enforcement resources more appropriately. It also would pay fiscal and economic dividends by eliminating severe barriers that keep many talented immigrant young people from completing their education. The average college graduate earns about a million dollars more over the graduate’s lifetime than the average high school dropout. (See Jennifer Cheeseman Day & Eric C. Newburger, U.S. Census Bureau, No. P23-210, The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings 3–4 (2002).)

The Dream Act is narrowly tailored to apply only to individuals who have grown up in the United States, can demonstrate “good moral character,” and have persevered to obtain a high school degree. About 65,000 such students—including many high achievers—graduate from high school each year. (Jeff Passel, Urban Institute, Further Demographic Information Relating to the Dream Act ¶ 3 (2003).) Such students often do not even learn of their undocumented status until their late teens.

Under current law, they are trapped by circumstances that they had no hand in creating and are forced to live under the constant threat of deportation from their homes to foreign countries that they barely recall. The law makes no distinction between them and those who entered recently as adults. Short of private bills and similar heroic measures, the current law provides for no mechanism to consider their character, their accomplishments, or the pleas for relief by those who watched them grow up.

The Dream Act would address this flaw by instituting such a mechanism and permitting them gradually to achieve permanent legal status and citizenship. By enacting the Dream Act, Congress would legally recognize what is de facto true: these young people belong here. This has become their home.

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[Editor's Note: For additional Clearinghouse REVIEW articles on immigration-related topics for youth, see Darryl L. Hamm, Special Immigrant Juvenile Status: A Life Jacket for Immigrant Youth, 38 Clearinghouse Review 323 (Sept.–Oct. 2004); Katina Ancar, The Legacy of Jenny Flores: Detained Immigrant Children, id. at 316.]

Collaborating with Community-Based Organizations to Provide Legal Services to Young Fathers

Low-income, unmarried fathers who want to be active in their children’s lives often have nowhere to turn for legal help. Noncustodial parents rarely receive direct legal assistance from legal aid organizations because their cases do not form the core priorities of the typical legal aid program. And community-based fatherhood organizations working with low-income fathers usually cannot afford to have a lawyer on staff.

In 2002 a collaborative was built in Minneapolis, Minnesota, to deal with this situation. Through public interest grants from the Berkeley Law Foundation and New York University’s Public Interest Law Foundation, Central Minnesota Legal Services partnered with the Father (Fostering Actions to Help Earnings and Responsibility) Project to provide legal education, advice, and representation to low-income fathers active in the project.

The idea for this legal collaborative is that fatherhood programs trying to accomplish “responsible fatherhood” for low-income fathers are lacking in the one resource usually critical for fathers to access and visit with their children: legal help. While informal visitation (i.e., no court order) may work fine for a while, this arrangement usually dissipates over time. The experience of Father Project staff is that informal agreements most commonly break down when the father has a new relationship or a new child. Poverty and factors such as homelessness, transportation, and child-support issues and communication gaps with the mother of the child also contribute to the breaking down of informal agreements.

The Father Project’s mission is to assist fathers in overcoming the barriers that prevent them from supporting their children economically and emotionally. The core components of the project, now a program of Goodwill/Easter Seals Minnesota, are (1) help in establishing paternity and managing child support orders; (2) assistance in finding employment and job training; and (3) parenting and support groups. A unique feature of the project is its partnerships with other agencies, such as the Hennepin County Child Support Office and the Minneapolis Public Schools/Adult Basic Education Program, each with on-site staff at the project. The partners meet often to coordinate and collaborate in the delivery of services.

Fathers participating in the project range in age from 16 to 30. Some have multiple children with multiple mothers, some have only one child, and some are expectant fathers. Each participant father is assigned an advocate—case manager, who helps the father with his own “fatherhood development plan,” gives him support, advocates on his behalf, and helps coordinate services.

When fathers start out in the Father Project, they receive a one-hour orientation from staff at Central Minnesota Legal Services about fathers’ legal
rights and responsibilities, including the issues of paternity, custody, parent- ing time (visitation), and child sup- port. If they are active in all three core components of the project, they are eligible to meet with the staff attorney. Assistance ranges from advice and brief service to direct representation in family court on cases involving patern- ity, custody, and parenting time and representation in juvenile court on child abuse and neglect cases.

Key to serving the legal needs of low-income noncustodial fathers has been partnering with community-based organizations such as the Father Project that can help the father over- come other barriers—such as lack of a job, an unmanageable child support order, or the loss of a driver’s license due to child support nonpayment—that affect his access to or visitation with his children. Often just as critical to the father’s legal success in securing ongo- ing involvement with his children are the support and encouragement that the father receives from an advocate at the community-based organization. Giving legal assistance to fathers within the framework of the supports provid- ed by the community-based organiza- tion is a winning strategy to engage and sustain low-income fathers’ involve- ment in the lives of their children.

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Local Ballot Initiatives Can Accomplish Dedicated Funding for Youth Programs

Adequate funding for programs serving children and adolescents is consistent- ly hard to sustain. Being unable to wield either money or votes as leverage in the political process, young people routinely are shortchanged by public budgetary processes.

During the 1990s advocates in the San Francisco Bay Area developed models for addressing, at least partially, these perennial budgetary shortfalls. Bypassing local legislative bodies, advocates went straight to the voters, who approved ballot measures guaran- teeing that a minimum amount of each city’s funds would be devoted to servic- es for children and adolescents. These initiatives have channeled millions of dollars into such programs in both cities.

San Francisco: Department of Children, Youth and Their Families.

Proposition J, passed in 1991 to be in effect for ten years, set aside $.025 per $100 of assessed property taxes in a Children’s Fund to be distributed through a competitive grant process to community-based organizations. The youth advocacy organization Coleman Advocates for Children and Youth spearheaded the effort to pass Proposition J after a string of exhaust- ing budget battles in the 1980s. In 2000 Proposition D extended the fund for an additional fifteen years and increased the amount to $.03 per $100. (SAN FRANCISCO, CAL., CHARTER § 16.108.) The ordinance is written to set a baseline and prohibit use of the Children’s Fund to supplant existing funding. Services eligible for funding are child care and early education; recreation, cultural, and after-school programs; health services; training, employment, and job placement; youth empowerment and leadership develop- ment; youth-violence prevention; tutoring and educational enrichment; family and parent support for fam- ilies receiving other Children’s Fund services. A community-needs assessment must be conducted every three years. The mayor appoints a fifteen- person advisory committee that must include at least three members who are under 18 when appointed. The Children’s Fund budget for 2004–2005 was approximately $21 million in a city of approximately 750,000. For more information, see www.dcyf.org.

Oakland: Oakland Fund for Children and Youth.

Measure K, passed in 1996 to be in effect for twelve years, amended the city charter to set aside 2.5 percent of the city’s unre-
Foundations Join Forces to Help Youth

The Youth Transition Funders Group, comprising over 200 local, regional, and national philanthropies, seeks to ensure that young people in the United States are successfully connected by age 25 to institutions and support systems that will enable them to succeed throughout adulthood. The group has worked since 2001 to improve the lives of the country’s most vulnerable youth.

A youth who is “connected by 25” will have reached five milestones:

- Educational achievement in preparation for career and civic participation, including a high school diploma, postsecondary degree, vocational certificate training, or some combination of them
- Gainful employment or access to career training or both to achieve life-long economic success
- Connections to a positive support system—guidance from family members and other caring adults, and access to health, counseling, and mental health services
- The capacity to be a responsible and nurturing parent
- The capacity to participate in the civic life of one’s community

To achieve their “connected by 25” mission, foundation members work together to enhance the likelihood that individual foundations’ investments will promote youth’s attainment of these outcomes. Foundations involved in the Youth Transition Funders Group agree to invest in strategies that have a dual focus—intervention to address the circumstances of young people who already are disconnected, and prevention to help ensure that their children thrive. The Youth Transition Funders Group is not a grant-making entity; individual member foundations make all grants and investments.

The group focuses on three overlapping areas: (1) expanding high-quality educational opportunities for vulnerable youth 14 to 24—both those in school and those reenrolling through alternative education and workforce development programs, (2) helping foster youth make a successful transition to early adulthood; and (3) improving outcomes for youth in the juvenile justice system. According to Gary Stangler, cochairman of the group’s steering committee, “the Youth Transition Funders Group has made significant progress in the last few years to raise awareness about the need to fund programs that support older youth who are disconnected or at risk of being disconnected from our communities. We currently are focusing our efforts on how funders can help to advance systems reform in juvenile justice, foster care, and education, so that these youth have the best chance possible to lead successful adult lives.”

The group’s website makes available some of its working papers and publications, including Connected by 25: Improving the Life Chances of the Country’s Most Vulnerable 14-24 Year Olds by Michael Wald and Tia Martinez (2003); Connected by 25: A Plan for Investing in Successful Futures for Foster Youth by Foster Care Work Group, Youth Transition Funders Group, with the Finance Project (2004); and A Blueprint for Juvenile Justice Reform by Youth Transition Funders Group (2005). Information on the group’s collaborative and strategic alliances, lists of the group’s steering committee members and work group chairpersons, and details on the group’s operations are also available on the website. For more information, visit www.ytfg.org or contact Lisa McGill at lmcgill@ytfg.org.

Adapted with permission from the Youth Transition Funders Group website.

The Role of Counsel in Representing Young People

What considerations arise for an attorney whose client is a minor? In the legal aid setting, where clients are usually adults, the attorney may not always anticipate the need to think differently about a case when the client is young. We must be mindful that, while the same zealous advocacy is called for as with adults, a client’s youth may impose additional obligations and require even more creative strategies.

Consider the following situation: a teenager is threatened with expulsion from school and the teen’s parent seeks help with the matter from a legal aid attorney. If the attorney undertakes the case, all parties—parent, teenager, and attorney—must clearly understand from the outset that the teenager, not the parent, is the client. As the case progresses, parent and teenager might disagree on the best resolution. Or the parent, assuming she is entitled to know what really happened with her child, might ask the attorney to reveal privileged information the teenager divulged as part of the attorney-client relationship. Anticipating these and other potential conflicts before they arise is the most effective way to avoid them.

Attorneys representing young people in poverty, especially attorneys unaccustomed to young clients, should remember that even young adolescents have a right to shape the direction of legal proceedings to which they are parties and, at the same time, to benefit from the attorney’s advice. The standards of practice reproduced below state clearly that an attorney’s role is to represent the child’s “expressed preferences” rather than the attorney’s view of the child’s best interest. The attorney should take particular care to develop a relationship of trust with the client and make plain that the client’s views are taken seriously, while being forthright with advice if the attorney believes that the position the client
wants to take in the case would be persuasive or even legally possible. In the end the attorney is obligated to act in accordance with the client’s instructions. But as a practical matter, if the groundwork is laid and rapport established, the client’s wishes and the attorney’s view of the client’s best interest will rarely diverge.

While these standards specifically address representation of children in abuse and neglect cases, they articulate principles that can inform representation of young clients in a much broader range of cases.

[Editor’s Note: The American Bar Association adopted these standards, with commentary omitted here, on February 5, 1996. The National Association of Counsel for Children adopted the standards, with reservation as to Standard B-4, on October 13, 1996, and amended Sections B-4 and B-5 on April 21, 1999. We present both versions of Section B-4 here; the National Association of Counsel for Children’s version is in italic type. The entire American Bar Association document is available at www.abanet.org/child/repstandwhole.pdf; the entire document with the National Association of Counsel for Children’s revisions is available at http://naccchildlaw.org/documents/abastandardsnaccrevised.doc.]

**American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases (NACC Revised Version)**

**Standards for the Child’s Attorney**

**A. Definitions**

A-1. The Child’s Attorney. The term “child’s attorney” means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

A-2. Lawyer Appointed as Guardian Ad Litem. A lawyer appointed as “guardian ad litem” for a child is an officer of the court appointed to protect the child’s interests without being bound by the child’s expressed preferences.

A-3. Developmentally Appropriate.

“Developmentally appropriate” means that the child’s attorney should ensure the child’s ability to provide client-based directions by structuring all communications to account for the individual child’s age, level of education, cultural context, and degree of language acquisition.

**B. General Authority and Duties**

B-1. Basic Obligations. The child’s attorney should:

1. Obtain copies of all pleadings and relevant notices;
2. Participate in depositions, negotiations, discovery, pretrial conferences, and hearings;
3. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child’s family;
4. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
5. Counsel the child concerning the subject matter of the litigation, the child’s rights, the court system, the proceedings, the lawyer’s role, and what to expect in the legal process;
6. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
7. Identify appropriate family and professional resources for the child.

B-2. Conflict Situations.

1. If a lawyer appointed as guardian ad litem determines that there is a conflict caused by performing both roles of guardian ad litem and child’s attorney, the lawyer should continue to perform as the child’s attorney and withdraw as guardian ad litem. The lawyer should request appointment of a guardian ad litem without revealing the basis for the request.

2. If a lawyer is appointed as a “child’s attorney” for siblings, there may also be a conflict which could require that the lawyer decline representation or withdraw from representing all of the children.

B-3. Client Under Disability. The child’s attorney should determine whether the child is “under a disability” pursuant to the Model Rules of Professional Conduct or the Model Code of Professional Responsibility with respect to each issue in which the child is called upon to direct the representation.

B-4. ABA Version

Client Preferences. The child’s attorney should elicit the child’s preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child’s attorney should represent the child’s expressed preferences and follow the child’s direction throughout the course of litigation.

1. To the extent that a child cannot express a preference, the child’s attorney shall make a good faith effort to determine the child’s wishes and advocate accordingly or request appointment of a guardian ad litem.

2. To the extent that a child does not or will not express a preference about particular issues, the child’s attorney should determine and advocate the child’s legal interests.

3. If the child’s attorney determines that the child’s expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer’s opinion of what would be in the child’s interests), the lawyer may request appointment of a separate guardian ad litem and continue to represent the child’s expressed preference, unless the child’s position is prohibited by law or without any factual foundation.
The child’s attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child’s position.

B-4. NACC Version

Client Preferences. The child’s attorney should elicit the child’s preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child’s attorney should represent the child’s expressed preferences and follow the child’s direction throughout the course of the litigation except as specifically provided herein. Client directed representation does not include “robotic allegiance” to each directive of the client. Client directed representation involves the attorney’s counseling function and requires good communication between attorney and client. The goal of the relationship is an outcome which serves the client, mutually arrived upon by attorney and client, following exploration of all available options.

1. While the default position for attorneys representing children under these standards is a client directed model, there will be occasions when the client directed model cannot serve the client and exceptions must be made. In such cases, the attorney may rely upon a substituted judgment process (similar to the role played by an attorney guardian ad litem), or call for the appointment of a guardian ad litem, depending upon the particular circumstances, as provided herein.

2. To the extent that a child cannot meaningfully participate in the formulation of the client’s position (either because the child is preverbal, very young or for some other reason is incapable of judgment and meaningful communication), the attorney shall substitute his/her judgment for the child’s and formulate and present a position which serves the child’s interests. Such formulation must be accomplished through the use of objective criteria, rather than solely the life experience or instinct of the attorney. The criteria shall include but not be limited to:

a. Determine the child’s circumstances through a full and efficient investigation;

b. Assess the child at the moment of the determination;

c. Examine each option in light of the two child welfare paradigms: psychological parent and family network; and

d. Utilize medical, mental health, educational, social work and other experts.

3. It is possible for the child client to develop from a child incapable of meaningful participation in the litigation as set forth in section B-4 (2), to a child capable of such participation during the course of the attorney client relationship. In such cases, the attorney shall move from the substituted judgment exception of B-4 (2) to the default position of client directed representation described in section B-4 “Client Preferences.”

4. If the child’s attorney determines that the child’s expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer’s opinion of what would be in the child’s interests), the lawyer shall, after unsuccessful use of the attorney’s counseling role, request appointment of a separate guardian ad litem and continue to represent the child’s expressed preference, unless the child’s position is prohibited by law or without any factual foundation. The child’s attorney shall not reveal the basis of the request for appointment of a guardian ad litem which would compromise the child’s position.

B-5. Child’s Interests. The determination of the child’s legal interests should be based on objective criteria as set forth in the law that are related to the purposes of the proceedings. The criteria should address the child’s specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing, and permanent environment, and the use of the least restrictive or detrimental alternatives available. [The National Association of Counsel for Children version of these standards contains the following note on this section: “Section B-5 … describes the determination of the child’s ‘legal interests’ as used in Section B-4 (2) (ABA Version) which reads: ‘to the extent that a child does not or will not express a preference about particular issues, the child’s attorney should determine and advocate the child’s legal interests.’ Under the NACC version of B-4, however, the ABA’s Section B-4 (2) has been deleted. Because the NACC version of B-4 does not use the term ‘legal interests,’ B-5 is irrelevant and has been deleted.”]

C. Actions to Be Taken

C-1. Meet with Child. Establishing and maintaining a relationship with a child is the foundation of representation. Therefore, irrespective of the child’s age, the child’s attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.

C-2. Investigate. To support the client’s position, the child’s attorney should conduct thorough, continuing, and independent investigations and discovery which may include, but should not be limited to:

1. Reviewing the child’s social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school, and other records relevant to the case;

2. Reviewing the court files of the child and siblings, case-related records of the social service agency and other service providers;

3. Contacting lawyers for other parties and nonlawyer guardians ad litem or court-appointed special advocates (CASA) for background information;

4. Contacting and meeting with the parents/legal guardians/caretakers of the child, with permission of their lawyer;
5. Obtaining necessary authorizations for the release of information;
6. Interviewing individuals involved with the child, including school personnel, child welfare case workers, foster parents and other caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
7. Reviewing relevant photographs, video or audio tapes and other evidence; and
8. Attending treatment, placement, administrative hearings, other proceedings involving legal issues, and school case conferences or staffings concerning the child as needed.

C-3. File Pleadings. The child’s attorney should file petitions, motions, responses or objections as necessary to represent the child. Relief requested may include, but is not limited to:

1. A mental or physical examination of a party or the child;
2. A parenting, custody or visitation evaluation;
3. An increase, decrease, or termination of contact or visitation;
4. Restraining or enjoining a change of placement;
5. Contempt for non-compliance with a court order;
6. Termination of the parent–child relationship;
7. Child support;
8. A protective order concerning the child’s privileged communications or tangible or intangible property;
9. Request services for child or family; and
10. Dismissal of petitions or motions.

C-4. Request Services. Consistent with the child’s wishes, the child’s attorney should seek appropriate services (by court order if necessary) to access entitlements, to protect the child’s interests and to implement a service plan. These services may include, but not be limited to:

1. Family preservation–related prevention or reunification services;
2. Sibling and family visitation;
3. Child support;
4. Domestic violence prevention, intervention, and treatment;
5. Medical and mental health care;
6. Drug and alcohol treatment;
7. Parenting education;
8. Semi-independent and independent living services;
9. Long-term foster care;
10. Termination of parental rights action;
11. Adoption services;
12. Education;
13. Recreational or social services; and
14. Housing.

C-5. Child with Special Needs. Consistent with the child’s wishes, the child’s attorney should assure that a child with special needs receives appropriate services to address the physical, mental, or developmental disabilities. These services may include, but should not be limited to:

1. Special education and related services;
2. Supplemental security income (SSI) to help support needed services;
3. Therapeutic foster or group home care; and

C-6. Negotiate Settlements. The child’s attorney should participate in settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect of continuances and delays on the child. The child’s attorney should use suitable mediation resources.

D. Hearings

D-1. Court Appearances. The child’s attorney should attend all hearings and participate in all telephone or other conferences with the court unless a particular hearing involves issues completely unrelated to the child.

D-2. Client Explanation. The child’s attorney should explain to the client, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

D-3. Motions and Objections. The child’s attorney should make appropriate motions, including motions in limine and evidentiary objections, to advance the child’s position at trial or during other hearings. If necessary, the child’s attorney should file briefs in support of evidentiary issues. Further, during all hearings, the child’s attorney should preserve legal issues for appeal, as appropriate.

D-4. Presentation of Evidence. The child’s attorney should present and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary.

D-5. Child at Hearing. In most circumstances, the child should be present at significant court hearings, regardless of whether the child will testify.

D-6. Whether Child Should Testify. The child’s attorney should decide whether to call the child as a witness. The decision should include consideration of the child’s need or desire to testify, any repercussions of testifying, the necessity of the child’s direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the child, and the child’s developmental ability to provide direct testimony and withstand possible cross-examination. Ultimately, the child’s attorney is bound by the child’s direction concerning testifying.

D-7. Child Witness. The child’s attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct
D-4. Questioning the Child. The child’s attorney should seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner.

D-5. Challenges to Child’s Testimony/Statements. The child’s competency to testify, or the reliability of the child’s testimony or out-of-court statements, may be called into question. The child’s attorney should be familiar with the current law and empirical knowledge about children’s competency, memory, and suggestibility and, where appropriate, attempt to establish the competency and reliability of the child.

D-6. Jury Selection. In those states in which a jury trial is possible, the child’s attorney should participate in jury selection and drafting jury instructions.

D-7. Conclusion of Hearing. If appropriate, the child’s attorney should make a closing argument, and provide proposed findings of fact and conclusions of law. The child’s attorney should ensure that a written order is entered.

D-8. Expanded Scope of Representation. The child’s attorney may request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment. For example:

1. Child support;
2. Delinquency or status offender matters;
3. SSI and other public benefits;
4. Custody;
5. Guardianship;
6. Paternity;
7. Personal injury;
8. School/education issues, especially for a child with disabilities;
9. Mental health proceedings;
10. Termination of parental rights; and
11. Adoption.

D-9. Obligations after Disposition. The child’s attorney should seek to ensure continued representation of the child at all further hearings, including at administrative or judicial actions that result in changes to the child’s placement or services, so long as the court maintains its jurisdiction.

E. Post-Hearing

E-1. Review of Court’s Order. The child’s attorney should review all written orders to ensure that they conform with the court’s verbal orders and statutorily required findings and notices.

E-2. Communicate Order to Child. The child’s attorney should discuss the order and its consequences with the child.

E-3. Implementation. The child’s attorney should monitor the implementation of the court’s orders and communicate to the responsible agency and, if necessary, the court, any non-compliance.

F. Appeal

F-1. Decision to Appeal. The child’s attorney should consider and discuss with the child, as developmentally appropriate, the possibility of an appeal. If after such consultation, the child wishes to appeal the order, and the appeal has merit, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the child during the pendency of the appeal.

F-2. Withdrawal. If the child’s attorney determines that an appeal would be frivolous or that he or she lacks the necessary experience or expertise to handle the appeal, the lawyer should notify the court and seek to be discharged or replaced.

F-3. Participation in Appeal. The child’s attorney should participate in an appeal filed by another party unless discharged.

F-4. Conclusion of Appeal. When the decision is received, the child’s attorney should explain the outcome of the case to the child.

F-5. Cessation of Representation. The child’s attorney should discuss the end of the legal representation and determine what contacts, if any, the child’s attorney and the child will continue to have.


Foster Home or Group Home? Ask Us

When I was moving from a residential treatment center to a group home, I had a social worker who acted like she knew what was best for me, even when I strongly disagreed. At the time, there were two group homes available to me. One was for 12 to 14 year olds and the other had 15 to 21 year olds.

Sent to the Home for Little Kids.
I was 16. I wanted to go to the group home for teens my age. But my social worker wanted me to live in the group home for younger kids so I could be a role model for them because they were wild.

Now, it’s true that I had changed since I first went into the system. At first, I was what you would call a badass with a bad attitude. I had a lot of anger in me and felt like the world was against me. But I worked hard to change my ways and it worked. I changed dramatically and that badass is long gone. Still, I never said I wanted to be anybody’s role model. I was in the system for my own difficulties that I wanted to work on. If anything, I still needed a role model.
I spoke to my social worker about how I felt. I explained that I wouldn’t feel comfortable being in a group home with kids who are wild when I was trying to get away from things of that nature.

**Forced to Be a Role Model.** She said, once again, that I had role model traits, and that being a role model was best for me. I felt like all that time and effort I put into changing from a ruthless teenager to a decent young man was now backfiring on me. Instead of being rewarded, I was being forced to live with younger kids. That made me feel like going back to being a badass.

That’s when I really got mad. I said, “You can’t know what’s best for me unless you are in my shoes. You’ve only been my social worker for four months!”

But I ended up moving into the group home for younger kids.

**I Was Angry.** When I entered that group home, a lot of my anger about the situation came with me. I didn’t want to be there and I felt that it wouldn’t work out. Then I knew it wouldn’t work out when I saw the rules and regulations for the place. The rules were made for younger kids. We had an 8 p.m. curfew on weekends, no rated R movies, and we were only allowed to watch cartoons and sports (excluding football and boxing, my favorites). I was the unlucky one who had to deal with those rules.

For trips, we went to places like the arcade, parades and anything else the average teenager has grown out of. The group home staff weren’t used to dealing with someone my age, who needed help getting a work permit, job training, and help preparing myself to be an adult.

My first week there, all that was on my mind (besides leaving) was that at least I was going to a real school, because at the RTC I had to go to school on campus. I could hardly wait to enter school where I could be around girls and make new friends of my own age.

**Stuck in the Wrong Class.** My social worker had to register me for school. It took her a few weeks before she got around to it. But when she did finally register me, she did something so selfish and so foul, I still can’t believe it.

Since it was the middle of the school year and they didn’t have any of my school records, they were going to give me a test to determine if I was academically fit for regular classes instead of special ed. Now, I’m a good student, so I felt that I had a decent shot at being in regular classes.

But my social worker was in a rush to go somewhere so she didn’t have time to let me take the test. I ended up in special ed with no test and no possibility of getting out until the next year.

Special ed had a reputation around the school for being for the dumb students. Most were teased for being “extra special,” as the kids would call it. This was bad for me as a new kid. How could I ever impress a smart girl if I told her that I was “extra special?”

**Please, Listen to Us!** Besides this, I just didn’t feel challenged there. We were getting the same easy work I used to get in 4th grade. I was bored in class, and I was bored in my group home.

I felt so angry at times. I wished over and over again that my social worker had taken what I said more seriously.

I know that all social workers aren’t like mine. I’ve had some good ones, too. And I know it’s hard work being a social worker when you have tons of kids to work with. But I still feel like if social workers listened to us teens more carefully, and took our requests more seriously, a lot of people, like myself, would have an easier time in foster care, in school, and dealing with our families.

Maybe then we could get placements that really work for us.

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**Shriver Center Director of Advocacy Receives 2005 Child Health Advocate Award from American Academy of Pediatrics**

John Bouman, the Sargent Shriver National Center on Poverty Law’s director of advocacy, received in July the American Academy of Pediatrics’ 2005 Child Health Advocate Award. The award honors individuals who have been outstanding in their advocacy for children’s rights.

Bouman was recognized for his “outstanding” service and advocacy that resulted, for Cook County’s low-income children, in a June 2005 settlement agreement ensuring that they have access to regular, consistent health care under the Medicaid program in Illinois (see Clearinghouse No. 53,827). According to the award letter, “the Memisovski v. Maram case ruling was a landmark victory for the rights of 600,000 children in Illinois and a source of hope for others across the county.”

Two past recipients of the award are former Illinois Attorney General Jim Ryan and Howard Dean, a physician and former governor of Vermont. “This is a tremendous honor,” says Bouman. “I’m proud that the professionals on the front line of providing health care to children recognize our contribution to improving children’s access to quality care.”
Youth-Related Articles in Recent Issues of CLEARINGHOUSE REVIEW

Education


Immigration


Welfare


The articles listed above are from the January–February 1999 to the May–June 2005 issues of CLEARINGHOUSE REVIEW. Subscribers may access these and earlier articles (beginning in 1990) in the Sargent Shriver National Center on Poverty Law’s online Poverty Law Library at www.povertylaw.org/legalresearch/articles/index.cfm.
The Sargent Shriver National Center on Poverty Law introduces eJustice, a technology leadership and support project for the poverty law community. Although the name is new, eJustice is a combination of two existing national projects: the National Technology Assistance Project and LStech.org, which were developed through funds from the Legal Services Corporation Technology Initiative Grants. In April 2005 these two projects joined forces—under a new name and with an expanded vision—as they became part of the Shriver Center, which recognizes the importance of responding to the poverty law community’s increasing need for technology services. At the Shriver Center, eJustice can deliver its services to a wider audience and expand its services.

eJustice will continue to provide the poverty law community with the support and services previously available through the National Technology Assistance Project and LStech:

- **Training.** Since 2002, the National Technology Assistance Project has trained nearly 2,000 people from nearly every Legal Services Corporation–funded legal aid program in the country. eJustice will continue to conduct online training sessions for executive directors, managers, technology staff, administrators, and advocates. These training sessions focus on how technology is used in the poverty law community and range from big-picture discussions for executive directors on issues such as how to integrate technology into the service-delivery system to technical training sessions for technology staff on issues such as how to set up a wireless network. Upcoming training sessions are free and are listed at www.ls-tech.org.

- **Support and Assistance.** eJustice will continue to provide support and assistance for legal aid programs developing Open Source Template statewide websites. The Open Source Template is a website framework used by statewide justice communities developing legal information websites through funding from the Legal Service Corporation Technology Initiative Grants.

- **Technology Tools and Services.** In late 2005 eJustice will launch a new website that will include more information on all of the eJustice services. This site will include LStech.org, the popular poverty law technology website, which will be redesigned but still accessible through its well-known website address. LStech.org is a repository for in-depth information on the many technologies that the poverty law community is using. Examples of these technologies include case management systems, geographic information system mapping software, hotline technologies, document assembly, videoconferencing, and website development. LStech.org will continue to provide all of its current services, which include posting technology news and training information, hosting e-mail lists, and hosting online forums for collaboration among poverty law staff using common technology tools.

- **Leadership.** eJustice leads nationally on issues affecting implementation, sustainability, and integration of technology within the poverty law community. Key to this leadership is that eJustice staff members are continuing to work in partnership with legal aid directors and technology leaders, including the National Legal Aid and Defender Association, Pro Bono Net, and the Legal Services Corporation. eJustice will also continue to work closely with legal aid programs that are leaders in developing, on a local level, technologies usable throughout the poverty law community.

Look for more updates in future issues of CLEARINGHOUSE REVIEW and on the Shriver Center’s website, www.poverty-law.org. The Shriver Center acknowledges the generous support of the Legal Services Corporation, Lone Star Legal Aid, and Legal Aid of East Tennessee in launching this new project.