youth law center

200 Pine Street, Suite 300
San Francisco, CA 94104
Phone: 415.543.3379
Fax: 415.956-9022
www.ylc.org

July 8, 2016

Honorable Tani Cantil-Sakauye, Chief Justice
Associate Justices of the California Supreme Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Request for Depublication, *In re Ivan N.* (2016)
No. D068595, Fourth Appellate District, Division One
San Diego County Superior Court No. J237013

Dear Chief Justice Cantil-Sakauye and Associate Justices of the California Supreme Court:

The Youth Law Center writes to request depublication of the Court of Appeal opinion in *In re Ivan N.*, No. D060589, filed May 20, 2016 by the Fourth Appellate District, Division One. The request is made pursuant to California Rules of the Court, Rule 8.1125. Counsel for the minor is aware of our interest, and supports the filing of this letter.

I. Youth Law Center's Interest in Depublication

The Youth Law Center is a national non-profit, public interest law firm that protects the rights of children in the child welfare and juvenile justice systems. For more than three decades, Center attorneys have been involved in juvenile appellate cases and legislative discussions of juvenile justice policy in California. We are very familiar with the educational rights of youth in the foster care and juvenile justice systems, and are therefore troubled by the court's reasoning in its opinion in *In re Ivan N.* The court misinterprets several provisions of the Welfare and Institutions Code (Welf. & Inst. Code) and Education Code (Ed. Code) that are critical in ensuring that probation-supervised foster youth are treated equitably and receive the education related protections intended by the Legislature. Permitting this decision to remain published will cause confusion, undermine educational stability, and threaten federal funding for California foster care placements. Therefore, the Court should depublish the decision.

II. Case Background

The juvenile delinquency court adjudicated Ivan N. (the minor), a ward of the court pursuant to Welfare and Institutions Code § 602 (602 ward), placing him in foster care. The minor requested a hearing on whether he could return to his school of origin after summer break was over, or at a later time while the juvenile court still retained jurisdiction over him. The juvenile court denied his request for a hearing, and on appeal, the Court of Appeal affirmed.

III. Necessity for Depublication

The Court of Appeal erroneously concluded that school of origin rights do not apply to 602 wards of the court. The Court of Appeal also erred in concluding that the probation officer is the educational decision-maker for a 602 ward and has the authority to decide whether a ward placed in a foster care facility must attend a facility designated school rather than his school of origin. The court's conclusions not only conflict with California law, but suggest that the state operates, in violation of federal law, a separate foster care program with different rules for youth adjudicated delinquent.

Youth who are adjudicated delinquent can be placed in foster care pursuant to Welfare and Institutions Code § 727. These youth are foster children even though they are supervised by probation. California receives federal financial participation for the costs of these placements for eligible children pursuant to Title IV-E of the Social Security Act (42 U.S. C. § 670, *et seq.*). *See,* U.S. Department of Health and Human Services, Children's Bureau, 8.3A.1 Title IV-E, Foster Care Maintenance Payments Program, Eligibility, Adjudicated Delinquents (federal financial participation is available for the cost of youth adjudicated delinquents in foster care who meet Title IV-E criteria). One of the requirements of Title IV-E is a case plan that includes:

> **(G)** A plan for ensuring the educational stability of the child while in foster care, including—
> **(i)** assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and
> **(ii) (I)** an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 7801 of title 20) to ensure that the child remains in the school in which the child is enrolled at the time of each placement; or

> **(II)** if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school. 42 U.S.C. § 675(1)(G)[1].

As of April 1, 2016, over 3,700 California youth were in probation-supervised foster care. Although about half of these youth were placed in group home facilities (like the minor in this case), probation-supervised foster youth are also placed in other foster care placements, such as with kin, foster families, and transitional housing. CCWIP Reports, University of California at Berkeley California Child Welfare Indicators Project, http://cssr.berkeley.edu/ucb_childwelfare. Absolute exclusion of a category of foster youth from educational stability requirements, as the court suggests in the present opinion, jeopardizes federal funding. 42 U.S.C. § 675(1)(G).

The Court of Appeal erroneously concluded that school of origin rights do not apply to 602 wards of the court.

In 2003, the California Legislature passed Assembly Bill 490 (AB 490), landmark legislation creating comprehensive educational rights specific to foster children including the right to attend their school of origin when initially or subsequently placed into a foster care placement. The intent of AB 490 was to address the host of negative educational impacts including educational instability that come with being in foster care. In order to ensure that foster youth have a meaningful opportunity to achieve academically, AB 490 mandated system stakeholders to work together to maintain school stability, required school placement decisions to be based on the foster youth's best interests, and ensured foster youth access to academic resources, services, enrichment and extracurricular activities available to all other students in the least restrictive educational programs. Ed. Code § 48850.

Despite clear statutory language to the contrary, the court in *Ivan N.* concluded that probation-supervised foster youth do not fall within the purview of the school of origin provisions in the Education Code. The educational protections for foster youth originally established through AB 490 have been enhanced and expanded over the years, but these protections have always included 602

[1] Modeled on California's Assembly Bill 490 (2003), Congress in 2008 added the educational stability case plan requirements as part of the Fostering Connections to Success and Increasing Adoption Act (P.L. 110-351). (See discussion below.)

wards, like the minor in the present case. AB 490 added section 48853.5 to the Education Code which provides in part:

> "Foster child" means a child who has been removed from his or her home pursuant to Section 309 of the Welfare and Institutions Code, is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code, or has been removed from his or her home and is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code. Ed. Code § 48853.5(a).

When a foster child is removed from home and placed into foster care or at any subsequent change in placement, the foster child is entitled to continue his or her education in the school of origin for the duration of the jurisdiction of the court. Ed. Code §§ 48853(a) and 48853.5(f)(1). Section 48853 specifically provides that a pupil's entitlement to remain in his or her school of origin pursuant to Section 48853.5 supersedes any preference to attend a regular local school. A school of origin may be the school last attended, the school attended when the youth was last permanently housed or if those schools are different a school with which the student is connected and attended within the preceding 15 months. Ed. Code § 48853.5(g). Clearly, the school of origin provisions are not merely advisory guidance for local education officials, but a substantive right for students at the center of ensuring educational stability for children in foster care.

In all instances, educational placement decisions for foster children must be based on the individual child's best interests and must ensure that the child is placed in the least restrictive educational program that can serve his or her needs. Ed. Code § 48853(g). The court's opinion disregards the required educational best interest process, allows group home facilities to dictate school choice and authorizes probation to unilaterally decide that probation supervised foster youth attend a facility designated school.

Probation has the responsibility to develop a case plan that ensures educational stability for youth placed in foster care under probation supervision. Welf. & Inst. Code §§ 706.5(a) and 706.6 (e). The case plan must include assurances that the placement decision takes into account the appropriateness of the current educational setting, the proximity to the school in which the child is enrolled at the time of placement, coordination with appropriate local educational agencies to ensure school stability or if not in the youth's best interests immediate and appropriate enrollment in a new school. Welf. & Inst. Code § 706.6.

The Court of Appeal erred in concluding that the probation officer is the educational decision-maker for a 602 ward.

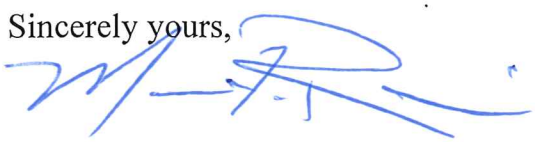
Parents/legal guardians have the right to make education-related decisions for their child unless the court limits that right. Welf. & Inst. Code § 726. When a juvenile court limits the right of a parent or legal guardian to make education decisions, the juvenile court must appoint a responsible adult to make those decisions on behalf of the ward. Welf. & Inst. Code § 726. In the present case, there is no evidence that the parents' rights were limited and that the probation officer was appointed as the education rights holder. Adjudging a child a ward of the court does not automatically limit parental education rights. The Court is required to make specific findings and order any limitation. Welf. & Inst. Code § 726(a). There is no evidence that the Court has done so.

Even if the Court did limit the parents' rights and appoint the probation officer, the appointment would violate conflict of interest laws. Employees of the county agency responsible for the care and supervision of the youth, including social workers and probation officers, are prohibited from holding the educational rights for a foster youth supervised by that county agency. Welf. & Inst. Code § 726(c) and Gov. Code §§ 7579.5(i) and (j). Government agency workers, whose priority and responsibility lies in the placement, care, custody and control of the child, have an inherent conflict of interest. The county agency's financial interests in placing in a particular educational placement may not always be in the child's best interest.

IV. Conclusion

The Court of Appeal opinion is wrong on the law and wrong as a matter of public policy. If the decision remains published, its critical misstatements of the law may impact the educational stability and educational outcomes of probation-supervised foster youth, as well as federal funding for foster care placements. For the all of these reasons, the opinion should be depublished.

Sincerely yours,



Maria F. Ramiu, Managing Director
Youth Law Center
CA State Bar No. 146497

PROOF OF SERVICE

Case Name: In re Ivan N. (2016)
Case Number: *CA Court of Appeal, Fourth District, Div. One D068595, San Diego County Superior Court No. J237013*

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 200 Pine Street, Suite 300, San Francisco, California 94104.

On the date indicated below I sent the attached document:

Request for Depublication

to the parties hereinafter listed by placing a true and correct copy of such document in an envelope and placing such envelope in a United States Post Office box, postage prepaid:

Warren Williams
Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

Steven John Carroll
P.O. Box 45338
San Diego, CA 92145

Clerk of the Court
San Diego County Superior Court
Main Courthouse, THIRD FLOOR
220 W. Broadway
San Diego, CA 92101

(*Courtesy copy Case Number J237013)*

Additionally, on the date below I served the above document on the **California Court of Appeal Fourth Appellate District, Division One** through the Court's True Filing system.

I, Robin Bishop, declare under penalty of perjury that the foregoing is true and correct. Served and executed on this 18th day of July 2016.

Rob Bishop