

Adolescents, the Foster Care System, and the Transition to Adulthood: What Legal Aid Lawyers Need to Know

By Alice Bussiere, Jennifer Pokempner, and Jennifer Troia

Alice Bussiere
Staff Attorney

Youth Law Center
417 Montgomery St., Suite 900
San Francisco, CA 94104
415.543.3379
abussiere@ylc.org

Jennifer Pokempner
Staff Attorney

Juvenile Law Center
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
215.625.0551
JPokempner@jlc.org

Jennifer Troia
Equal Justice Works Fellow

Youth Law Center
jtroia@ylc.org

Although foster care often evokes an image of young children, nearly half of all foster children are 11 years old or older, and a large number of youth who have suffered from abuse, neglect, or abandonment leave the child welfare system as teenagers.¹ According to 2002 (the most recent) national data, 20 percent (56,360) of the 281,000 children who left foster care that year were 16 through 18 years old, 24 percent (67,388) were 11 through 15, and 2 percent (6,365) were 19 or older. The data also show that 19,509 young people (7 percent) left care through emancipation or “aging out” of the system (often at 18, when they no longer qualify for services).²

Teens who leave foster care face enormous challenges. Young persons who emancipate from foster care are more likely than other young ones to experience homelessness, unemployment, unplanned pregnancy, legal system involvement, substance abuse, and difficulty in obtaining basic services, such as health care.³ They are less likely to have a high school diploma, earn enough to support themselves, and go on to postsecondary education or training.⁴ Adolescents who leave foster care before emancipation and without a permanent placement face even greater obstacles.⁵

Legal aid advocates led early efforts to help youth aging out of foster care. In 1985 the Coalition for the Homeless and the Urban Justice Center joined with the law firm of Sullivan & Cromwell to file suit on behalf of New York City’s current and former fos-

¹In 2002, of the 532,000 children in foster care, 17 percent (92,091) were 16–18 years old, 30 percent (158,290) were 11–15, and 2 percent (10,321) were 19 or older. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, THE AFSCARS REPORT: PRELIMINARY FY 2002 ESTIMATES AS OF AUGUST 1 (2004), www.acf.hhs.gov/programs/cb/publications/afcars/report9.pdf.

²*Id.* at 3.

³E.g., MARK E. COURTNEY & AMY DWORSKY, CHAPIN HALL CENTER FOR CHILDREN, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19 (2005).

⁴E.g., Rachael H. Sherman, *Serving Youth Aging Out of Foster Care*, FINANCE PROJECT ISSUE NOTE (Welfare Information Network) (October 2004), www.financeprojectinfo.org/publications/servingyouthagingoutIN.pdf; Thom Reilly, *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*, 82 CHILD WELFARE JOURNAL 727–46 (Nov.–Dec. 2003); Richard Wertheimer, *Youth Who “Age out” of Foster Care: Troubled Lives, Troubling Prospects*, CHILD TRENDS RESEARCH BRIEF (2002), www.childtrends.org/Files/FosterCareRB.pdf; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO/HEHS-00-13, FOSTER CARE: EFFECTIVENESS OF INDEPENDENT LIVING SERVICES UNKNOWN (1999), www.gao.gov/new.items/he00013.pdf; Richard P. Barth, *On Their Own: The Experiences of Youth After Foster Care*, 7 CHILD AND ADOLESCENT SOCIAL WORK JOURNAL 419–40 (1990); CAROL BRANDFORD & DIANA J. ENGLISH, OFFICE OF CHILDREN’S ADMINISTRATION RESEARCH, FOSTER YOUTH TRANSITION TO INDEPENDENCE STUDY (2004), www1.dshs.wa.gov/pdf/ca/FYTfinal2004.pdf; Mark E. Courtney et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care*, 80 CHILD WELFARE JOURNAL 685–717 (2001).

⁵See J. Curtis McMillen & Jayne Tucker, *The Status of Older Adolescents at Exit from Out-of-Home Care*, 78 CHILD WELFARE JOURNAL 339–60 (1999); Mark E. Courtney & Richard P. Barth, *Pathways of Older Adolescents Out of Foster Care: Implications for Independent Living*, 41 SOCIAL WORK JOURNAL 75–83 (1996).

ter youth facing homelessness after being discharged by the courts from foster care. They won court orders that prohibited New York City from discharging youth without providing independent living skills training, required adequate supervision of discharged youth, and mandated state regulations governing the obligation to supervise foster youth who leave care.⁶ Since that victory, legal aid advocates have joined with other child advocates to improve the lives of teens in foster care and young adults who leave the system.

I. The Changing Approach to Helping Foster Youth

Ideas about how to help teens in foster care have evolved over the years. In 1987 the Independent Living Initiative under the Consolidated Omnibus Budget Reconciliation Act of 1985 provided federal funds to help train foster youth in independent living skills.⁷ Then, in recognition that young adults needed health insurance, a place to live, and help with education in order to succeed, Congress provided transitional Medicaid and federal funding for transitional services in 1999 and education and training vouchers in 2001.⁸ Recently youth development experts recognized that independent living skills and transitional services were insufficient and that older foster youth, like their

younger peers, needed connections to caring adults.⁹ Child welfare, youth development, and legal professionals are increasingly looking more closely at adolescent development concerns and working to improve long-term planning strategies for older youth in foster care.¹⁰ A key to their success is the involvement of young people in foster care in planning for their own lives and improving the policies that affect them.¹¹

II. The Federal Framework

Federal law provides for both entitlement program mandates and flexible block grant funding aimed at improving the lives of foster youth.

A. Entitlement Programs: Title IV-E Foster Care and Medicaid

Title IV-E of the Social Security Act provides for federal financial participation in the cost of foster care for eligible children.¹² States must comply with requirements designed to limit foster care stays and ensure that children receive appropriate care as conditions of receiving these funds. For example, according to federal requirements, states must reasonably try to prevent foster care placement, reunify families when reunifying them is safe, and make plans permanent for children who cannot return home.¹³ All children who

⁶*Palmer v. Cuomo*, 503 N.Y.S. 2d 20 (1986).

⁷Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, tit. XII, § 12307(a), adding 42 U.S.C. § 677.

⁸Foster Care Independence Act of 1999, Pub. L. No. 106-169, § 101(b), 113 Stat. 1822 (amending 42 U.S.C. § 677) and 201 (amending 42 U.S.C. 1396a(a)(10)(A)(ii) and 1396d); Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107-133, § 201 (amending 42 U.S.C. 677).

⁹KRISTI CHARLES & JENNIFER NELSON, NATIONAL RESOURCE CENTER FOR YOUTH DEVELOPMENT, PERMANENCY PLANNING: CREATING LIFELONG CONNECTIONS—WHAT DOES IT MEAN FOR ADOLESCENTS? (2000), <http://nrcys.ou.edu/nrcyd/publications/monographs/mono.pdf>.

¹⁰E.g., Ruth Massinga & Peter J. Pecora, *Providing Better Opportunities for Older Children in the Child Welfare System*, FUTURE OF CHILDREN JOURNAL 151–73 (Winter 2004), www.futureofchildren.org/usr_doc/9-hussings.pdf; KATHLEEN McNAUGHT & LAUREN ONKELES, NATIONAL RESOURCE CENTER FOR YOUTH DEVELOPMENT, IMPROVING OUTCOMES FOR OLDER YOUTH: WHAT JUDGES AND ATTORNEYS NEED TO KNOW (2004), <http://nrcys.ou.edu/nrcyd/publications/pubspdfs/improveoutcomes.pdf>; MADELYN FREUNDLICH, CHILDREN'S RIGHTS, JUVENILE RIGHTS DIVISION OF THE LEGAL AID SOCIETY & LAWYERS FOR CHILDREN, TIME RUNNING OUT: TEENS IN FOSTER CARE (2003), www.childrensrightrights.org/Policy/resources_CRresources_time_running_out.htm.

¹¹See, e.g., REINA M. SANCHEZ, CALIFORNIA PERMANENCY FOR YOUTH PROJECT, YOUTH PERSPECTIVES ON PERMANENCY (2004).

¹²42 U.S.C. § 670 (2003).

¹³*Id.* § 671(a)(15); see also *id.* § 622(b)(10)(B)(iii).

enter foster care have the right to a case plan that describes how the child welfare system will meet their needs.¹⁴ Long-term foster care placement is not an appropriate case plan goal, and each child's case should be reviewed at least every six months at a permanency hearing after the child is in care for a year.¹⁵ If appropriate, case plans for youth 16 and older must include an independent living plan with a written description of programs and services that will help the youth prepare to make the transition from foster care.¹⁶ Although these provisions apply to every child in foster care, they have been underutilized for older children.

In 1999 Congress amended Title IV-E and Medicaid to meet the particular needs of older foster youth, as part of the John H. Chafee Foster Care Independence Act¹⁷. The Act raised the asset limit for Title IV-E eligibility from \$1,000 to \$10,000, allowing the young to save more money for college and other expenses when they leave care.¹⁸ The Act also enabled states to be flexible in providing transitional Medicaid for emancipated youth up to age 21 by creating an optional eligibility group of "independent

foster care adolescents."¹⁹ States may set asset, resource, and income limits for this population.²⁰ Although this category is optional to states, the Centers for Medicare and Medicaid Services encourage them to utilize the opportunity to help former foster youth.²¹

B. The Chafee Foster Care Independence Program

A block grant, the John H. Chafee Foster Care Independence Act funds independent living and transitional services for current and former foster youth.²² (The funds are referred to as "Chafee" or "FCIA" funds.) States must design Chafee plans to meet the needs of teens who are likely to remain in foster care until 18 and provide ongoing support to youth aging out of care.²³ As long as states meet minimum requirements, they may be flexible in designing the plans.²⁴ Services must be available throughout the state, though not necessarily in a uniform manner; use objective eligibility criteria; and ensure fair and equitable treatment of recipients and young persons' direct participation

¹⁴*Id.* § 671(a) (16); see also *id.* §§ 622(b)(10)(B)(ii), 675(a)(5)(A).

¹⁵42 U.S.C. § 675(1)(E), (5)(B), (C) (2003); 45 C.F.R. § 1356.21(h)(3)(2004); see also commentary at 65 Fed. Reg. 4020, 4036 (Jan. 25, 2000).

¹⁶42 U.S.C. § 675(1)(D) (2003).

¹⁷Foster Care Independence Act of 1999, Pub. L. No. 106-169, 113 Stat. 1822, §§ 101(b) (amending 42 U.S.C. § 677), 121 (amending 42 U.S.C. §§ 1396a9a)(10)(A)(ii), 1396d).

¹⁸42 U.S.C. § 672(a)(2003); Title IV-E requires children to meet the Aid to Families with Dependent Children (AFDC) criteria in place in 1996 when the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, eliminated the AFDC program. This provision replaces the AFDC \$1,000 asset limitation.

¹⁹42 U.S.C. §§ 1396a (a)(10)(A)(ii)(XVII), 1396d (w) (3)(2003). For a complete description of transitional Medicaid for foster youth and its benefits, see Abigail English & Kathi Grasso, *The Foster Care Independence Act of 1999: Enhancing Youth Access to Health Care*, 34 CLEARINGHOUSE REVIEW 217-32 (July-Aug. 2000).

²⁰42 U.S.C. § 1396d(w)(1)(C), (2) (2003).

²¹See Letter from Centers for Medicare and Medicaid Services to State Child Welfare and State Medicaid Directors (Dec. 1, 2000), www.cms.hhs.gov/states/letters/smd12100.asp.

²²42 U.S.C. § 677 (2003); other funding sources may be available to assist youth making the transition from foster care. See Sherman, *supra* note 4.

²³Although Title IV-E requires independent living plans for youth 16 and older, see 42 U.S.C. § 675(1)(D), states may provide independent living services to younger foster children. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILDREN'S BUREAU, CHILD WELFARE POLICY MANUAL § 3.1B, www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=188 [hereinafter CHILD WELFARE POLICY MANUAL]; 42 U.S.C. § 677(a)-(b)(2)(A) (2003).

²⁴For variations in state programs, see Massinga & Pecora, *supra* note 10, and U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO/HEHS-00-13, FOSTER CARE: EFFECTIVENESS OF INDEPENDENT LIVING SERVICES UNKNOWN (November 1999). The National Resource Child Welfare Resource Center for Youth Development's website (http://nrcys.ou.edu/nrcyd/state_home.htm) describes Chafee services available in each state.

in designing their own program activities.²⁵ Chafee Services to youth still in care must help them (1) make the transition to self-sufficiency; (2) receive the education, training, and services needed for employment; and (3) prepare for and enter postsecondary training and educational institutions.²⁶ Services to youth aging out of care include (1) personal and emotional support through mentors and interaction with dedicated adults; (2) financial, housing, counseling, employment, education, and other appropriate support; and (3) education and training vouchers.²⁷ Up to 30 percent of the funds may be used for transitional housing for former foster youth.²⁸

A special allotment of Chafee funds is made for education and training vouchers.²⁹ States may provide Chafee eligible youth, including youth adopted from foster care after age 16, with up to \$5,000 a year to cover attendance costs at an institution of higher education.³⁰ Young persons are eligible up to age 23 as long as they are enrolled in postsecondary education or training and are making satisfactory progress toward completion.³¹ The value of vouchers may be disregarded in determining the youth's eligibility for other federally supported assistance as long as the total federal assistance does not exceed the cost of attendance.³²

III. State and Local Initiatives

Federal laws and policies provide for some of the necessary framework to support youth in the child welfare system, but more must be done to ensure that young people are prepared to survive independently and have meaningful permanent relationships. Some states and localities have implemented policies and legislation to ensure compliance with or to supplement federal laws. These efforts include improved permanency and discharge planning, extension of court jurisdiction, and provision of housing, education, and other support.

A. Court Protocols, Practice, and Advocacy

Many legal obligations to ensure permanency for foster youth fall on child welfare agencies, but courts and child advocates also play a crucial role in enforcing legal protection provisions and engaging young persons who often feel forgotten by the child welfare system.

1. Improved Permanency and Discharge Planning

Although much attention has been focused on the permanency needs of infants and young children, permanency-planning requirements also apply to teens in foster care. Efforts are under way in several places to improve planning for

²⁵42 U.S.C. § 677(2)(B), (b)(E), (b)(3)(H) (2003); The John H. Chafee Foster Care Independence Act also includes consultation, coordination, and nonsupplementation provisions, as well as data collection and outcome measurement requirements. 42 U.S.C. §§ 677(b)(3)(E), (F), (G), (d) (2), (e)(2), (f) (2003); to date, information has not been sufficient to gauge the effectiveness of independent living services. GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 24; *id.*, GAO-05-25, FOSTER YOUTH: HHS ACTIONS COULD IMPROVE COORDINATION OF SERVICES AND MONITORING OF STATES' INDEPENDENT LIVING PROGRAMS (2004).

²⁶42 U.S.C. §§ 677(a)(1)–(3), (b)(2) (2003).

²⁷*Id.* §§ 677(a)(4)–(6), (b)(2).

²⁸*Id.* § 677(b)(3)(B); Chafee funds may not be used for housing for youth under 18, but daily living expenses of eligible youth can be covered through IV-E foster care. *Id.* § 672.

²⁹*Id.* § 677(c)(3), (h)(2); states may provide vouchers of up to \$5,000 per year to cover the costs of attendance at an institution of higher education for Chafee eligible youth, including youth adopted from foster care after age 16. *Id.* § 677(i)(2). The value of vouchers may be disregarded in determining the youth's eligibility for other federal or federally supported assistance as long as the total amount of federal assistance does not exceed the cost of attendance. *Id.* § 677(i)(5).

³⁰*Id.* § 677(i)(2).

³¹*Id.* § 677(i)(3).

³²*Id.* § 677(i)(5).

older youth, including how to renew or maintain connections with birth family and foster relationships with responsible adults, as well as promote adoption and guardianship when appropriate.³³

Some jurisdictions are implementing standards for permanency reviews and discharge hearings for older youth to increase the chances that these young persons will experience permanency and have the support they need upon discharge. Permanency guidelines established through policy, regulation, or practice standards can set clear and concrete expectations in individual cases and highlight needed changes in policy.

Key components of a protocol for permanency review hearings and discharge hearings are outlined in the California Youth Connections sidebar to this article. Courts in Philadelphia and Chicago, among other locations, are trying to implement these standards; and several states have integrated these concerns into laws or policies.³⁴ For example, California strengthened permanency planning for older foster youth through legal requirements designed to ensure that no child leaves foster care without a lifelong connection to a committed adult.³⁵ Social workers are required to identify individuals who are important to youth, including asking older ones who are important to them, and to help youth maintain those relationships if such relationships are consistent with their

best interests.³⁶ The law requires that agencies train child welfare professionals on the importance of maintaining relationships with individuals who are important to children in out-of-home placement, ways to identify those individuals (including, but not limited to, asking the child), and methods of supporting those relationships.³⁷ The law also provides for inclusion of individuals important to the youth in the development of transitional-living plans.³⁸ The courts oversee the child welfare agency's efforts to maintain the child's relationships and may issue appropriate orders to enable children to maintain them.³⁹

California has also implemented discharge criteria to ensure that young persons are better prepared when they are emancipated from foster care. Before a youth reaches the age of majority, the child welfare agency must verify that the youth has received certain services (such as assistance in obtaining transitional Medicaid or other health insurance, transitional housing, and applications for postsecondary training or education) and essential documents (such as a birth certificate, social security card, and identification card or driver's license).⁴⁰ If these requirements are not met, and if continued court involvement is in the best interest of the youth, the court can extend jurisdiction.⁴¹

2. Youth-Focused Court Practice

Involvement of young people in the planning process that affects their lives helps

³³To focus attention on adoption for older foster youth, the Adoption Opportunities Act includes an additional payment for adoption of older children as part of the adoption incentive program. *Id.* § 673b(d)(1)(C), (g)(5), (6). See also congressional findings, Pub. L. 108-145, § 2, 117 Stat. 1879; see, e.g., MARDITH J. LOUISELL, CALIFORNIA PERMANENCY FOR YOUTH PROJECT, MODEL PROGRAMS FOR YOUTH PERMANENCY (2004); Alice Bussiere, *Permanency for Older Foster Youth*, FAMILY COURT REVIEW JOURNAL (forthcoming 2006).

³⁴See State of Connecticut, Adolescent Discharge Plan, www.state.ct.us/dcf/Policy/Adoles42/42-10-2.htm, and Passing from Care, www.state.ct.us/dcf/Policy/Adoles42/42-20-30.htm.

³⁵Assembly Bill 408 (Cal. 2003), ch. 813, http://info.sen.ca.gov/cgi-bin/postquery?bill_number=ab_408&sess=PREV&house=B&site=sen.

³⁶This is mandatory for youth who are over the age of 10 and are in group care; and this is permissive for other youth. CAL. WELF. & INST. CODE §§ 16501.1(i), 366.1(g), 366.21(c) (West 2004).

³⁷*Id.* § 16206(c)(12).

³⁸*Id.* §§ 10609.4(b)(1)(E), (G).

³⁹*Id.* §§ 366(a)(1)(B), 366.1(g), 366.21(c), (g), (h), 366.22(a), 366.26(c)(3), 366.3(e)(2), (3), (f)(3), 391(b)(5).

⁴⁰*Id.* § 391; See also CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, MANUAL OF POLICIES AND PROCEDURES 31-236; CAL. WELF. & INST. CODE § 10609.4(b) (West 2004).

⁴¹CAL. WELF. & INST. CODE §§ 391(c), 303 (West 2004).

ensure that plans are realistic and based on their real needs and aspirations.⁴² Involvement also helps dispel the experience of too many foster youth of feeling ignored and disempowered by the system that is supposed to serve such youth.

Youth-focused court practice is the hallmark of Benchmark Hearings held in Cook County Family Court. The hearings, which occur in addition to regular permanency review hearings, are scheduled for youth 16 and older upon referral of a caseworker, child advocate, or lawyer for the children and youth agency. They occur in a conference room instead of a courtroom and last about an hour. The hearings focus on interaction between the youth and the judge; all other parties give support and information. At the hearing, the judge and youth review the youth's future plans and set concrete goals. They agree upon the youth's responsibility for meeting the goals and enter into a contract that is reviewed at the next hearing. These hearings have been so valuable to older youth in Cook County that the court assigned one judge to hold all of them. This judge, who is knowledgeable about the resources and programs for older youth, helps young people obtain the services and assistance that they need to meet their goals. The judge has great rapport with young people and fully engages them at the hearings.

3. Promoting Permanency for Older Youth

A California Court-Appointed Special Advocate (CASA) program is conducting an Interdependent Living Pilot Program that assigns a volunteer to an older youth with the specific goal of achieving permanency for the youth.⁴³ Funded through the Children's Justice Act, the program involves

current and former foster youth as advisors and trainers.⁴⁴ CASA volunteers receive technical assistance and support, and, once the curriculum is finalized, they will receive training on adolescent development, experiences of youth in foster care, cultural transitions and independent living needs, and policies and resources to support emancipating youth. The program will evaluate whether CASA volunteers will have changed the overall outcomes of transitioning youth; if the results are positive, this model may be disseminated nationally.

4. Extending Juvenile Court Jurisdiction

Some young persons are just not ready to be on their own when they reach 18. Extended court juvenile court jurisdiction can provide them with the additional support that they need. More than half the states offer the opportunity for youth to stay in care past the age of majority; sometimes the states require that such youth meet basic education and employment requirements.⁴⁵ This extra time to finish education or training, make stable housing arrangements, or obtain supportive services can significantly help youth make the transition to adulthood. However, federal law provides for a disincentive to the continuation of foster care because federal financial participation in foster care benefit payments is limited to youth under 18, or under 19 if students are expected to complete school or training by their 19th birthdays.⁴⁶ This funding cutoff pressures states to terminate jurisdiction before young people are ready to survive on their own. However, thoughtful jurisdictions recognize that support for foster youth is cost-effective compared with the costs of homeless shelters and other negative outcomes such as those described above.

⁴²Some states provide a statutory right for youth of a certain age to receive notice of court hearings and participate in proceedings. See, e.g., *id.* §§ 290.1(a)(4), 290.2(a)(4), 349, 399.

⁴³Court-Appointed Special Advocates are volunteers appointed by the court to advocate on behalf of children who have been removed from their homes. They investigate the child's circumstances, ensure that services are provided, and advocate the child's best interests.

⁴⁴For more information on the administration of Children's Justice Act funds to the states, see the Administration for Children and Families fact sheet, available at www.acf.dhhs.gov/programs/cb/publications/cjafact.htm.

⁴⁵AMERICAN BAR ASSOCIATION CENTER ON CHILDREN AND THE LAW, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21-YEAR-OLD FOSTER YOUTH (Howard Davidson ed., 2004) (on file with Alice Bussiere).

⁴⁶CHILD WELFARE POLICY MANUAL, *supra* note 23, at 8.3A.2.

B. Enhanced Placement and Housing Options

Although the child welfare system's goal is to find permanency for youth through a stable living arrangement with caring adults, some young people remain in the system a long time, often in congregate care or institutional settings that do not prepare them for living on their own or maintaining close relationships.⁴⁷ Some child welfare agencies are responding to these situations. Connecticut now provides a comprehensive range of adolescent services to give young people increasing freedom and responsibility as they get older. The continuum moves from small adolescent group homes to transitional-living apartments with a few other youth and a resident advisor, all the way to a housing subsidy and case management for young persons to live on their own.⁴⁸ The Adolescent Services Unit provides a mentoring program for older youth. This continuum is a dramatic departure from the common practice of imposing more restrictions on older ones in foster care, especially if they make mistakes or errors in judgment. However, Connecticut's model is consistent with adolescent development research, which highlights the need for youth to test boundaries and learn from mistakes; the research also notes that excessive limitations lead to rebellion rather than compliance.⁴⁹

1. Providing Supportive Housing

Many young persons in foster care urgently need supportive housing, which can help them secure a place to live and manage a budget that includes rent. Supportive housing can also provide case management and other services. Since

most young persons in foster care do not attend college, few structured programs help them meet their housing needs. Even for such young persons who are college-bound and can live in school housing, that housing is not always available, particularly during vacations and summer break.

Limited federal funds are available to meet these transitional housing needs. Still, several states, noting the importance of stable housing to youth aging out of the system, have implemented innovative programs with the funds that are available. For example, Illinois uses a portion of its FCIA funds to run the Youth Housing Assistance Program. Caseworkers can refer youth to the program six months before emancipation. Services include help finding a place to live, budgeting, and finding community resources; financial assistance for start-up costs; a partial housing subsidy to help with rent for up to twelve months when housing costs exceed 30 percent of the youth's income; and cash assistance to help deal with emergencies.⁵⁰

In 2001 the California Youth Connection, an organization of current and former foster youth, initiated the Campaign for Safe Transitions: Housing for Former Foster Youth.⁵¹ The centerpiece of this campaign was Assembly Bill 427, which created a Transitional Housing Placement Program and a dedicated stream of funds called the Transitional Housing for Foster Youth Fund.⁵² Counties apply and must provide 60 percent of the funds, while California provides a 40 percent match. Nine counties participate in this program, and advocates are optimistic about expansion, although they must fight budget pressures.

⁴⁷See, e.g., FREUNDLICH, *supra* note 10.

⁴⁸See www.state.ct.us/dcf/Policy/Adoles42/42-1.htm for more information on Connecticut's Department of Children and Families Adolescent Services.

⁴⁹E.g., increased restrictions may encourage youth to run from placement. MARNI FINKELSTEIN ET AL., VERA INSTITUTE OF JUSTICE, YOUTH WHO CHRONICALLY AWOL FROM FOSTER CARE: WHY THEY RUN, WHERE THEY GO, AND WHAT CAN BE DONE 9–11 (2004), www.vera.org/publication_pdf/244_460.pdf.

⁵⁰For more information, see Youth Housing Assistance Program 2002, www.state.il.us/DCFS/docs/YouthH.pdf.

⁵¹For information on California Youth Connection, see www.calyouthconn.org; see also sidebar.

⁵²CAL. WELF. & INST. CODE § 11403.1, .4 (West 2004).

2. McKinney-Vento Homeless Assistance Act Funds

The Stewart B. McKinney Homeless Assistance Act, known as the McKinney-Vento Act, provides funding for states, localities, and nonprofit organizations to address the housing and service needs of homeless individuals.⁵³ Administered by the U.S. Department of Housing and Urban Development (HUD), the Act can fund supportive housing that is transitional or permanent or both, in addition to other housing options to address the needs of special population groups, such as those with mental health concerns.

States divide themselves into regions, and sometimes large cities, to apply for funding. Applicants must first develop a continuum-of-care plan. HUD defines this as “a community plan to organize and deliver housing and services to meet the specific needs of people who are homeless as they move to stable housing and maximum self-sufficiency.”⁵⁴ The plan must (1) identify population groups at risk of becoming homeless and (2) develop strategies to prevent homelessness. Communities should include the housing needs of older youth leaving the child welfare system in their plans because of these young persons’ high risk of becoming homeless. Young persons in foster care and their advocates have successfully encouraged some regions or cities to make this population a priority concern. For example, Philadelphia County’s plan designated youth leaving care as a priority population for the next fiscal year.

Advocates can also encourage agencies with expertise in working with young adults

(e.g., child welfare agencies and private providers of independent living or child welfare services) to apply for McKinney-Vento funds. These applicants often must match some of the federal funds as a condition of applying for HUD funds for housing. Through that process, McKinney-Vento provides for an opportunity for children and youth agencies to partner with housing agencies to meet the needs of their mutual clients.

C. Education Assistance

Although young people in foster care struggle against enormous odds to get a good education, most of them want to achieve postsecondary education or training.⁵⁵ However, frequent placement moves and lack of coordination among agencies prevent many foster youth from even finishing high school.⁵⁶ A significant number of them are also eligible for special education services and may face even greater challenges.⁵⁷

Some states have passed statutes to increase educational opportunities for foster youth. In California, Assembly Bill 490, sponsored by California Youth Connection, requires that placement decision makers take the child’s educational needs into consideration, permits foster children to remain in their school of origin for the remainder of the school year even if they are placed out of the district, mandates prompt transfer of education records and immediate enrollment if the child must change schools, and requires school districts to appoint an educational liaison for foster children to facilitate placement, enroll-

⁵³Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11431 (2003).

⁵⁴U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GUIDE TO CONTINUUM OF CARE PLANNING AND IMPLEMENTATION 7 (2005), www.hud.gov/offices/cpd/homeless/library/coc/cocguide/intro.pdf.

⁵⁵Studies indicate that less than half of foster youth leave care with jobs or a high school education. See, e.g., McMillen & Tucker, *supra* note 5. Foster youth are more likely to be held back in school, suspended, or expelled than their peers. See, e.g., MARK E. COURTNEY ET AL., CHAPIN HALL CENTER FOR CHILDREN, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: CONDITIONS OF YOUTH PREPARING TO LEAVE STATE CARE 42 (2004); J. Curtis McMillen et al., *Educational Experiences and Aspirations of Youth in Out-of-Home Care*, 82 CHILD WELFARE JOURNAL 475 (2003).

⁵⁶See, e.g., COURTNEY ET AL., *supra* note 55, at 41–42; SUSAN L. BURRELL, YOUTH LAW CENTER, GETTING OUT OF THE RED ZONE: YOUTH FROM THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS SPEAK OUT ABOUT THE OBSTACLES TO COMPLETING THEIR EDUCATION AND WHAT COULD HELP (2003), www.ylc.org/ylc_sedu.htm.

⁵⁷See ADVOCATES FOR CHILDREN, PROJECT ACHIEVE: A MODEL PROJECT PROVIDING EDUCATIONAL ADVOCACY FOR CHILDREN IN THE CHILD WELFARE SYSTEM (2005). For a “conservative” estimate that 40 percent of foster youth in New York City require special education, see www.advocatesforchildren.org. For an analysis of the intersection between foster care and special education law and suggestions on how to serve youth who fit into both systems, see Cynthia Godsoe, *Caught Between Two Systems: How Exceptional Children in Out-of-Home Care Are Denied Equality in Education*, 19 YALE LAW AND POLICY REVIEW 81 (2000).

ment, and efficient transfer of records.⁵⁸ The law also emphasizes the right to the least restrictive school placement, including attendance at a mainstream school when such attendance is in the best interest of the child, requires schools to give students full or partial credit for completed work, and prohibits schools from penalizing students for absences because of attendance at court hearings or court-ordered activities.⁵⁹

Other advocacy and educational support efforts are under way to help foster youth attain their goals. In New York City, Advocates for Children's Project Achieve provides individual advocacy to clients of a private child welfare agency and trains agency staff and birth and foster parents on school-related issues.⁶⁰ In Alameda County, California, a collaboration between Protection and Advocacy and the CASA program resulted in an Equal Justice Works fellowship project that trains and matches educational surrogates to older foster youth.⁶¹ Gateway to College programs in Portland, Oregon, serve at-risk high school students and dropouts aged 16–20. The programs are being replicated in other sites around the country.⁶² Some colleges and universities also provide support programs specifically targeted to help foster youth have a successful college experience.⁶³

California Youth Connection was also instrumental in advocating legislation designed to inform young people in foster care about their options for postsecondary education and to encourage schools to support them. Young people who are in foster care in California and are over 16 have the right to information about available educa-

tional options, including coursework necessary for vocational and postsecondary educational programs and financial aid for postsecondary education.⁶⁴ State law also provides for California state universities and community colleges to work with child welfare agencies to encourage foster youth enrollment and provide technical assistance on admissions and financial aid applications. The law requires university trustees and the California Community College Board to assure basic student housing during the regular academic school year (including vacations and holidays), provide technical assistance and advice to campuses on how to improve services to emancipated foster youth, and track the retention rates of students who voluntarily disclose their status as emancipated foster youth.⁶⁵



The problems addressed by the New York legal aid advocates who brought *Palmer v. Cuomo* in 1985 have not been resolved. Older adolescents leaving foster care still face tremendous obstacles as they make the transition to adulthood. However, the increasing focus on improving foster care and permanency planning for adolescents, providing them with independent living skills, and giving them the support that they need as they make the transition out of care is cause for optimism. The programs highlighted here are a few examples of innovative solutions that communities are creating and enacting in efforts to change the tide.

Authors' Acknowledgment

We would like to thank Mamie Yee, paralegal, Youth Law Center, for her help in preparing this article.

⁵⁸Assembly Bill 490 (Cal. 2003), ch. 862, http://info.sen.ca.gov/pub/03-04/bill/asm/ab_0451-0500/ab_490_bill_20031012_chaptered.pdf; CAL. WELF. & INST. CODE § 16501.1(c) (West 2004); CAL. EDUC. CODE §§ 48853.5, (b), (d), 49069.5 (West 2004).

⁵⁹CAL. EDUC. CODE §§ 48853, 49069.5(e), 48645.5, 49069.5(h) (West 2004); CAL. WELF. & INST. CODE §§ 361(a), 726(b) (West 2004).

⁶⁰ADVOCATES FOR CHILDREN, *supra* note 57.

⁶¹ See Equal Justice Biography, <http://info.equaljusticeworks.org/fellowships/profiles/fellowprofile.asp?fguid=4013743000>.

⁶²Information on the Gateway to College Program, funded by the Bill & Melinda Gates Foundation, can be found at www.gatewaytocollege.org/replication.htm.

⁶³See, e.g., www.fullerton.edu/guardianscholars, www.bsu.edu/ssrc/guardianscholars, www.orangewoodfoundation.org/programs/GScholars.asp, and www.heald.edu/corporate/Guardian_Scholars.pdf.

⁶⁴CAL. WELF. & INST. CODE § 16001.9(a)(23) (West 2004).

⁶⁵CAL. EDUC. CODE § 89340 (West 2004).

Permanency and Discharge Hearings for Foster Youth: A Protocol for Aiding Judges

The juvenile court has the opportunity—and a special obligation—to ensure that young persons entrusted to the state’s care have the support that they need to leave, usually at 18, the foster care system (“aging out” of care), as self-sufficient, healthy, and productive adults. Advocates can and should aid the court in meeting this obligation by proposing the implementation of a court protocol so that the court may hold accountable all parties working with the youth for achieving positive outcomes for older youth in foster care.

While the youth is still in the state’s care, the youth’s family service plan lays out the family’s permanency goals—such as reunification or adoption—and the persons or entities responsible for providing services to meet the goals. For adolescents who are in the child welfare system and are 16 and older, the family service plan must include independent living goals, which ensure that the adolescents can make a successful transition to adulthood from the child welfare system. The child welfare agency must revise the family service plan at least once every six months and involve all interested parties.

At permanency review hearings, which the court holds for all youth in state child welfare systems, the judge must ensure that the appropriate permanency goals are in place for the family and that those goals are in progress. Under federal law, the court also must make findings of what services are needed to help a youth 16 and older successfully make the transition to adulthood. (42 U.S.C.A. § 675 (1)(D) (1994).)

However, the child welfare system and the courts often overlook youth older than 16 in state care. The caseworker, youth, family, service providers, and attorneys for the parties can address at family service plan meetings many issues related to older adolescents’ well-being and independent living skills. Implementing a court protocol is an addi-

tional strategy to leverage the court’s authority and power to ensure that older adolescents receive the services that they need. All stakeholders—child and family advocates and attorneys, parents, child welfare professionals, court personnel, and youth—can design the court protocol, which fleshes out how older youth can achieve permanency and independent living skills. The judge reviews the protocol orally in court or requires the child welfare worker to submit the protocol to the court or at the permanency review hearing. An essential aspect of the protocol is that it establishes the court’s expectations for the permanency and preparation for the transition to adulthood services that the child welfare agency is to provide for older youth.

While no protocol can cover all the needs of a youth, the following are key areas that it should cover.

At permanency review hearings for older youth still in the state’s care, the court should ensure that the youth has the following:

- An appropriate permanency goal and plan (the child welfare agency must have made reasonable efforts to finalize an appropriate permanency plan).
- Visitation with family, including siblings.
- Connections with caring adults (e.g., family and mentors).
- The least restrictive, most familylike placement.
- An appropriate independent living plan that identifies service needs and includes an assessment of the youth’s progress in areas such as education; vocational training, employment, and career planning; home management and daily living skills; budgeting and financial planning; housing planning; and reproductive health and planning.

Continued on page 169

Permanency and Discharge Hearings for Foster Youth: A Protocol for Aiding Judges (*Continued*)

- Health and mental health needs identified and met.
- Current educational needs identified and met.
- Support in planning for future educational needs—including postsecondary education and training and financial aid—and an assessment of the youth's progress.
- Vocational training and employment and career planning needs met.
- Special needs identified and the involvement of agencies—such as the Office of Vocational Rehabilitation, Office of Mental Retardation, or Office of Mental Health—required to meet those needs.
- Other individual needs met—such as ensuring that young people do not leave the child welfare system without resolving their immigration status. (Youth in the dependency system may be eligible for Special Immigrant Juvenile Status, 8 U.S.C. § 1101(a)(27)(J) (2003). This status affords a route to lawful immigration status and should be considered for all young people who are in the child welfare system and have no lawful immigration status. See generally Darryl L. Hamm, *Special Immigrant Juvenile Status: A Life Jacket for Immigrant Youth*, 38 CLEARINGHOUSE REVIEW 323 (Sept.–Oct. 2004).)

When a youth is discharged from the child welfare system at 18 or older, the court should ensure that the youth has the following:

- Information on the youth's right to continue in foster care (e.g., placement and services) if there is such a right under state law.
- Information on the right to receive, under the Chafee Foster Care Independence Act, 42 U.S.C. § 677 (1999), independent living services,

including room and board services and Medicaid, until age 21 (if the jurisdiction has opted to extend Medicaid eligibility).

- A stable place to live that the youth can maintain.
- A plan for education or training and assistance in obtaining financial aid.
- A plan for employment or vocational training or both.
- Medical insurance and a plan for obtaining needed treatment.
- Services in place to meet any special needs (including establishing Supplemental Security Income eligibility and services through the Office of Mental Retardation and Office of Mental Health).
- All necessary documentation, such as social security card, birth certificate, high school diploma, driver's license, or a state identification card.

If the youth is under 21 and the youth and the child welfare agency have not achieved any component of the discharge plan, the court should not discharge the youth and should enter orders to make sure that an appropriate and viable discharge plan is accomplished before the youth is released from the state's care.

For more detailed information on how to aid the court at permanency and discharge hearings, see JENNIFER POKEMPNER & LOURDES M. ROSADO, *JUVENILE LAW CENTER, DEPENDENT YOUTH AGING OUT OF FOSTER CARE: A GUIDE FOR JUDGES* (2003), and *DEPENDENT YOUTH AGING OUT OF FOSTER CARE IN PENNSYLVANIA: A JUDICIAL GUIDE* (3d ed. 2003). Both publications are available at www.jlc.org/home/publications.

Jennifer Pokempner

Staff Attorney, Juvenile Law Center, 1315 Walnut St., 4th Floor, Philadelphia, PA 19107; 215.625.0551; JPokempner@jlc.org

California Youth Connection: Organizing Foster Youth for Change

In most of the country, one very important party is absent from foster care policy making: foster youth. Although every aspect of foster children's and youth's lives is fundamentally affected by child welfare policy, policymakers often make assumptions about what is best for these young people without ever talking with them or hearing their stories. In California, for almost twenty years, young people in foster care have been working diligently through the California Youth Connection, a nonprofit leadership and advocacy organization of current and former foster youth, to remedy this injustice by becoming equal partners in foster care policy development.

With twenty-two county-based chapters and more than 400 members, the California Youth Connection works on the local and state levels to educate legislators and policymakers about how policies and programs affect foster youth. Through this organization, young people 14–24, currently or formerly in foster care, are trained in public speaking, organizational skills, policy and strategic thinking, media advocacy, and the legislative process. They then use those skills to collaborate with policymakers to influence every aspect of foster care and those who make law and policy concerning it. The organization's advocacy efforts have shattered the stereotype that young people in foster care are too young and inexperienced to participate in policy making and have shown that such young people themselves are in the best position to advise the foster care advocacy community about what works and what does not.

Over the years, the efforts of California Youth Connection members have resulted in many changes in child welfare policy, including creation and expansion of transition programs, increased protection of sibling relationships, a foster youth bill of rights, a state foster care ombudsman office, and efforts to ensure that no foster youth leaves care without a permanent lifelong connection with a caring adult. Last year the organization's mem-

bers took on the difficult task of improving educational outcomes for foster youth who must attend nonpublic schools. Many young people in foster care were forced to attend nonpublic schools operated by their group homes as a condition of placement in group homes, out of convenience for the provider, or because they had been labeled as having emotional and behavioral problems. Foster youth complained that the nonpublic schools provided a substandard education and that young people in foster care were denied access to basic educational services. Furthermore, attending school within the group home led young people to feel that they were isolated and that the focus of school was behavior management.

Young people in foster care visited with every state legislator to share their experiences and recommendations to reform nonpublic schools. These recommendations were formally introduced in Assembly Bill 1858. (A.B. 1858, 2004–2005 Sess., Reg. Sess., ch. 914 (Cal. 2004), available at http://info.sen.ca.gov/pub/03-04/bill/asm/ab_1851-1900/ab_1858_bill_20040930_chaptered.pdf.) A.B. 1858 is now law and improves the quality of nonpublic schools by (1) requiring students to have access to a standards-based curriculum and the same instructional materials, qualified teachers, college preparatory coursework, and extracurricular activities available to students at public schools and (2) mandating that nonpublic schools be monitored and held accountable as are public schools to ensure that they are offering appropriate educational services and that students are progressing adequately. Skeptics of the ability of foster youth to participate in foster care reform efforts need only look at A.B. 1858, as well as the California Youth Connection's other accomplishments in California, to realize how critical and powerful foster youth involvement in policy making is.

Jennifer Rodriguez

Legislative and Policy Coordinator, California Youth Connection, 604 Mission Street, 9th Floor, San Francisco, CA 94105; 415.442.5060 ext. 21 or toll free 800.397.8236; jennar22@hotmail.com