

REVERSING THE FAILURE OF THE FOSTER CARE SYSTEM

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I. INTRODUCTION

In the world of foster care, most debate focuses on how children are brought into the system: there is concern that children are too easily taken away from parents, especially poor parents. There is also concern that, on the contrary, the system is too lax in protecting vulnerable children from abusive family members. Newspapers regularly report horror stories that fuel both worries. Hardly any attention, however, is paid to the system's failings at the other end of the pipeline, when its oldest charges are released as young adults. This is a serious oversight, for over a third of the half million children in foster care in America are teenagers,¹ and, as a rule, the system neither prepares them for a successful future nor even allows them to prepare themselves.²

According to the hundreds of young people and caseworkers we have met while working with the New York City foster care system, foster children are typically discharged from the system somewhere between the ages of eighteen and twenty-one³ with a small stipend and an exit interview in which a counselor asks the teen if she has any plans or knows what she

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¹ U.S. DEP'T OF HEALTH & HUMAN SERV., ADMIN. FOR CHILDREN & FAMILIES, ADMIN. ON CHILDREN, YOUTH & FAMILIES, CHILDREN'S BUREAU, TITLE IV-E INDEPENDENT LIVING PROGRAMS: A DECADE IN REVIEW (1999), available at <http://nccanch.acf.hhs.gov/pubs/otherpubs/il/execsum.cfm> (last visited Feb. 27, 2004).

² Although federal law mandates preparing teens for "independent living," John H. Chafee Foster Care Independence Program, 42 U.S.C. § 677(c)(H) (2004), this has meant little in practice because the programs are woefully inadequate. For example, in New York, foster care agencies are required to provide only two days per year of training in life skills, and they are not even required to show that the teens attend the classes. N.Y. COMP. CODES R. & REGS. tit. 18, § 430.12(f)(2)(i)(a) (2003).

³ See, e.g., WASH. REV. CODE § 13.34.030(2) (2004) (stating that a child is "any individual under the age of eighteen years"); OHIO REV. CODE ANN. § 5153.01(B)(3) (Anderson 2003) (specifying a child as under twenty-one).

will do next, to which the common response is, "Plans?" If we have learned anything in our work with these young people, it is that things do not have to be this way.

The recent enactment of the Foster Care Independence Act ("FCIA")⁴ may represent a recognition of the need to provide greater resources for foster care teenagers, but it is only the first step in paving the way for adolescents to emerge from foster care as capable, independent adults. This Article first elaborates on the current dismal state of our foster care system and then describes our efforts to improve the social and legal services offered to these teens. It then outlines our concrete proposals to reverse the failure of our foster care system: raising expectations of foster teens, providing them education and opportunities to create life plans, and holding the foster care system accountable for the futures of the teens in its custody.

II. THE CURRENT STATE OF OUR FOSTER CARE SYSTEM

The country's multi-billion-dollar foster care system began as a response to the mounting plight of the urban poor and was designed for the temporary protection of infants and small children at risk of abuse or neglect.⁵ It was never meant to raise adolescents to adulthood, and it still has not fully adjusted to the tens of thousands of children that remain in its care long-term; many in foster care who entered as children remain in the system through their teens, and thousands more enter the system as teenagers.⁶

⁴ Foster Care Independence Act of 1999, Pub. L. No. 106-169, 113 Stat. 1822 (codified as amended in scattered sections of 42 U.S.C.). FCIA doubled the annual funding for services to adolescents to \$140 million (still less than \$900 per eligible child). *Id.* 1828. The money is used to finance health care and job-placement programs, as well as to help provide low-cost housing to young adults leaving foster care. *Id.* 1824. In its investigations surrounding the enactment of the FCIA, Congress made several findings. Among them were that adolescents leaving foster care have significant difficulty making a successful transition to adulthood and exhibit high rates of poverty, homelessness, nonmarital childbearing, delinquent or criminal behavior, and victimization as the target of crime and physical assaults. *Id.* 1823. Congress urged state and local governments, with financial support from the federal government, to "offer an extensive program of education, training, employment, and financial support for young adults leaving foster care," beginning during high school and continuing until they "establish independence" or reach age twenty-one. *Id.*

⁵ Deborah L. Sanders, *Toward Creating a Policy of Permanence for America's Disposable Children: The Evolution of Federal Foster Care Funding Statutes from 1961 to Present*, 29 J. LEGIS. 51, 56 (2002).

⁶ See Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and a State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 538 n.87 (asserting that "most foster children remain in foster care until they are adults and are never returned to their biological parents' homes" (citing CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN 62-63 (1992)); Susan Vivian Mangold, *Extending Non-Exclusive Parenting and the Right to Protection for Older Foster Children: Creating Third Options in Permanency Planning*, 48 BUFF. L. REV. 835, 863 (2000) (noting that "[n]early one-third of the children entering care in any year or in care during that year are teens" (citing HOUSE COMM. ON WAYS & MEANS, GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN

The foster care bureaucracy is chiefly concerned with the daily maintenance of its charges and with mental health issues related to the trauma of separating children from their families.⁷ At all levels, the teens in its care are seen as “problem children” who are difficult enough to control without worrying about their future.⁸ Moreover, the system provides no incentives to treat these teenagers otherwise. In New York City, for example, agencies are paid for every day they keep a child in foster care.⁹ For teens in foster homes the rate ranges from \$19 to \$30 a day per child, and for those in group homes the agencies receive as much as \$155 per day.¹⁰ It does not matter whether the New York agencies turn out every teen to homelessness or to a four-year university; the funding remains the same, and all agencies are eligible to take teens again the next year.

Moreover, the foster care system denies its charges any opportunity for personal responsibility. Young adults who have recently graduated from the system report that the first time they ever cooked for themselves, purchased groceries, looked for work, managed a personal budget, or cleaned an apartment was after they left foster care.¹¹ Perhaps providing troubled teenagers a tightly controlled environment makes them easier to manage, but this tactic shortchanges them in the long run by preventing them from acquiring and practicing skills they require as adults.

At the same time, the system reinforces maladaptive behavior that backfires in situations beyond welfare bureaucracies. In foster care, teens learn that the way to obtain more attention is to demonstrate being more victimized, traumatized, or potentially self-destructive than the other teens in care.¹² Children who have spent years in the system are terribly good at relating the horror of the situations they have lived through, yet they have had no experience articulating the skills, strengths, or value they can bring to an employer, college, family, or friendship.

THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 783, 786 (Comm. Print 1998)).

⁷ See YOUTH ADVOCACY CENTER, INC., *THE FUTURE FOR TEENS IN FOSTER CARE: THE IMPACT OF FOSTER CARE ON TEENS AND A NEW PHILOSOPHY FOR PREPARING TEENS FOR PARTICIPATING CITIZENSHIP 2* (2001), available at <http://www.youthadvocacycenter.org/futureforteens.pdf> (last visited Feb. 22, 2004).

⁸ *Id.* at 19.

⁹ *Id.* at 40.

¹⁰ Molly Armstrong, *The Importance of Bridging the Gap Between Child Welfare and Juvenile Justice for Arrested Foster Youth*, 185 LITIG. & ADMIN. PRAC. COURSE HANDBOOK SERIES 55, 68 (Practicing Law Inst. 2000) (noting that “child welfare per diem rates range from \$19 to a high of \$155 . . .”).

¹¹ See YOUTH ADVOCACY CENTER, INC., *supra* note 7, at 33.

¹² *Id.* at 32 (stating that “[i]nvariably, the ‘worst case’ gets the most attention—in the group home, at the agency office, in the courtroom. Teens learn that ‘acting out’ is an effective tool for getting necessary attention . . .”).

III. OUR WORK IN THE FOSTER CARE SYSTEM AND THE DEVELOPMENT OF YOUTH ADVOCACY CENTER

Our work with teens in foster care began while we were practicing as lawyers in family court. As court-appointed legal guardians for these adolescents, our job was to represent to the judge our clients' wishes regarding foster care placement. The focus in family court was on each teen's past and present crises: Had they been abused, abandoned, or neglected? How many placements had they cycled through? What were the troubles in their current group or foster homes? Each young person's future was considered in only the most cursory way: when a judge would ask what the plan was for a child, her caseworker would usually answer that it was "03," the city's code to mean that the plan for this child is independent living. The judge would merely make note of this and call the next case, without conducting any further inquiry into what preparations were being undertaken to guarantee that the teenager would be able to live "03."

After only a short time spent working in family court, we quickly discovered that an independent living plan offered very little in the way of resources to help adolescents emerge as functioning adults. Neither the caseworkers nor the judges were doing anything to make sure that adolescents left foster care with either opportunities for higher education or jobs and places to live. Without such prospects, the outcomes for most teens were predictable: many quickly went from child welfare to adult welfare, homelessness, or prison.¹³ Even the best advocacy in family court on behalf of these children did not change these results. There was a prevailing sense that there were simply too many obstacles stacked against these young people for them to become successful adults.

Frustrated with the failure of the social services and legal systems to address the needs of these teens, we started Youth Advocacy Center ("YAC"). We believe that adolescents in foster care had both the potential and the desire to become fully participating members of society. In our first years at YAC, we focused on teaching foster care teens to advocate for themselves within the system. Yet, while the teenagers were effective at learning their rights and traditional legal advocacy skills, we still saw too many teens leave foster care without concrete plans and skills for the future.

¹³ See 143 Cong. Rec. H2012-06, H2028 (daily ed. Apr. 30, 1997) (statement of Rep. Burton) (citing the ACLU's statistics that of the 15,000 foster care children who reach the age of majority without a permanent place to live "40% become dependent on [Aid to Families with Dependent Children (welfare)], 46% dropped out of school, 51% were unemployed, and 60% of the women had out-of-wedlock births within 2 years from graduating from foster care. The Bureau of Justice reports that former foster children are nearly 30 times more likely to be incarcerated than individuals who never spent any time in foster care.").

IV. A PLAN FOR CHANGE

To reverse the failure of the foster care system for teens, three changes must occur. First, we must raise our expectations for these adolescents. Second, we must provide them the training and support they need to develop concrete and realistic plans for the future. Finally, we must hold the foster care system accountable for the success or failure of the young people in its custody.

A. Raising Expectations

Throughout the foster care system, teenagers are viewed as delinquents, victims, or mental health patients, rather than students, sons, and daughters. They are thought of as potential homeless shelter residents, prisoners, and welfare recipients, not as future college students, employees, business owners, or professionals.¹⁴ This perception has been all-consuming and self-fulfilling. Until it changes, few of these young people will rise above their current dismal destiny. The system must formally adopt and widely instill the philosophy that every adolescent in its care has the potential to become a participating citizen.

One important result of such a change in attitude would be greater emphasis on education. When we first began representing foster care teens in court, we were surprised that so many asked us for help getting into high school. Some were not even enrolled; others had been forced to change schools several times as they were moved from one foster home to another, losing credits in the process; still others had been placed in restrictive education settings that were clearly unsuitable. The teens themselves understood that their education would be critical to later success. The response from their caseworkers, though, was that the school system was difficult to work with, or the paperwork cumbersome, or the teenagers too traumatized to take on challenging schoolwork. Teens who are seen as

¹⁴ An example of this phenomenon is the story of Diana, a bright and personable nineteen-year-old in the Youth Advocacy program who wanted to be an attorney. She obtained what she thought was the perfect first job, working in the accounting department of a law firm in midtown Manhattan, in order to save money for college. However, because of the obligations of her job, Diana was unavailable during the day to meet with the group home's staff and social workers whenever they might call, and she was unable to attend the weekly sessions where group home residents aired their complaints about one another. In the eyes of the group-home staff, Diana had become a problem.

As punishment for her absences because of work, Diana's visits with her family were suspended and one day she came home from work to find all of her belongings packed into garbage bags. The supervisor told her she was placed on "serious house restriction," required her to wear pajamas throughout the day, and allowed her to change clothes only at the discretion of staff. The supervisor also instructed her to quit her job. When Diana protested, the supervisor told her she could either follow the rules or sign herself out of foster care. Diana walked out of the group home without a place to go, and with her college dreams suddenly severely hindered.

future dependents of the state often feel forced to drop out of high school in these difficult circumstances.¹⁵ If foster care agencies and staff viewed these teens as potential college students, their approach would be different.

B. Education and Creating Plans for the Future

1. Self-Advocacy

Over time, we have developed a new concept of “self-advocacy” that we began to teach teens through YAC. Our brand of self-advocacy is a conceptual and skills-based process that includes goal-setting, research, analyzing facts and information, understanding and evaluating the goals of the “other side,” identifying supporters, and planning and making effective oral and written presentations.

To teach self-advocacy, we started offering seminar classes. We developed cases using stories about teens in various situations and discussion questions. Drawing on our legal educations, we employed a modified Socratic method with teens to analyze the stories. This helped students to think critically and to come up with their own questions and solutions about how to navigate job, education, and other situations. The teens we have worked with have responded overwhelmingly positively to using their intellectual capacities through both the case and Socratic methods.

When we started our self-advocacy seminars for foster care teens, however, even well-meaning professionals in the field told us not to expect much from such adolescents. They claimed the youngsters’ “issues” and “crises” were too overwhelming for them to maintain a commitment to any after-school program, much less a voluntary, twelve-week, thirty-hour program with strict attendance, homework, and behavior requirements. However, many of our teens have proved them wrong.

Simone,¹⁶ for example, was seventeen years old when she enrolled in our seminar. One day, shortly before class, we received a call from her caseworker warning us that Simone had been in a serious altercation at the agency the day before in which weapons were potentially involved. Although she did have a very troubled background, Simone turned out to be committed to improving her life. She never missed a class. She completed all the written homework and even redid unsatisfactory assignments. During group discussions, she began to give positive feedback to her peers. More importantly, she began to see herself differently. Her ambition, she revealed, was to become a chef. Over the course of the seminar, we referred to her career goal and interest in cooking, and with each mention she would smile slightly and sit up a bit straighter.

¹⁵ See *supra* note 13.

¹⁶ Not her real name.

The final project in the self-advocacy seminar is for each student to conduct an informational interview with a professional in her field of interest. We found a well-known chef, who was also a cookbook author and TV personality, to meet with Simone. Simone was incredibly nervous. She had never set foot in an expensive restaurant or in the unfamiliar upscale neighborhood. We assured her that if she stuck to her prepared agenda of asking questions and offering information about her own objectives, the interview would be a success.

In the end, the chef spent over an hour with Simone, telling her about his restaurant and its menu, the culinary field in general, and different professional schools and internships. He asked about her favorite types of foods, her interests, and her plans for the future. Simone returned to class ecstatic. This formerly sullen teenager could not get the smile off her face as she told the others about her interview and her goal. She came back with concrete information and a high-level contact in the field who was willing to help her.

2. Higher Education

There are several simple steps that can be taken to ensure that all teens in care are seen as having the capacity to pursue higher education. All foster care agencies with custody of teenagers must present college as a viable option and teach their teens that college is essential to developing lifelong learning skills that will equip them for future career advances and changes. By their junior year of high school, teens should have three prospective colleges entered into their permanent case records along with calendar plans for visits,¹⁷ applications, and test preparation. Furthermore, social workers or caseworkers should write college recommendation letters for each teen in care.¹⁸ Foster care agencies should run annual "Where Are They Now?" college nights, during which foster care teens can meet former graduates of both foster care and college who can explain the college experience and discuss how going to college enriched their lives.

If these and other practices are implemented, foster care staff, as well as the teens they work with, will become more focused on the importance of education. These practices will also fill the void that parents ordinarily serve in the college application process. Teens who may feel unsure or lack knowledge about the possibility and importance of college

¹⁷ Around age sixteen or seventeen, all teens in foster care should be taken to a college campus and allowed to sit in on classes. Even if their local school provides such a service, the foster care system must reinforce such programs to create an overall culture that values college by staff and students.

¹⁸ If there is any reason to preclude a positive recommendation, the teen should be advised of the situation and given options to change her performance.

will have the extra resources they need to take full advantage of educational opportunities.

3. "Y25 Future Plans"

Before being discharged from foster care, every teen should also be helped to develop a concrete plan for reaching his or her career, education, and personal goals.¹⁹ In our own work, we developed a model called the "Y25 Future Plan." Ideally, the plan begins with an initial informational interview with a professional in the teen's chosen career field.²⁰ In most cases, the professional will provide the teen with specific career information, internship opportunities, and networking contacts. The next stage is collaborative; the teen works with a staff "Y25 Coach" to develop his or her plan. The Y25 Coach meets with the student every four to six weeks to monitor progress and make any recommendations for development. Y25 Coaches must be trained to help students work independently as well as under their guidance. When each teen's Y25 plan is fully developed, a second informational interview should be arranged, ideally with the same expert, to review the plan and to make suggestions for further advancement. This process can be monitored by making the Y25 plan part of the case record, to be periodically reviewed at case conferences and court hearings. The adequacy of the plan can be evaluated by the community informational interviewers and trained career counselors employed by the agency.

Young people need training and support to create, research, and implement life plans. Our self-advocacy education and Y25 plans are only a

¹⁹ The plan should enumerate specific steps toward each objective (e.g., "In September, I will make an appointment to speak to a college admissions officer") up through age twenty-five. It should be based on information gathered by the teen through research and informational interviews and developed with the participation of an adult with whom the teen expects to have a continuing relationship after leaving foster care.

²⁰ The informational interviews are particularly useful. YAC's experience in New York City and Philadelphia revealed the existence of a pool of successful professionals in a wide range of career fields who are willing to give time and share their experience and wisdom with young people starting out in life. Establishing networks of such individuals can easily be accomplished. The first step is to use the network of boards of directors of prominent corporations and organizations within the community. Normally these individuals can target specific professionals for specific career fields. The agency can then set up meetings at the interviewers' offices to expose students to their actual workplaces.

Foster care teens rarely have much interaction outside the system. As a result, they do not develop a realistic vision of what it is like to engage in the world outside school and foster care. Likewise, the public has little contact with these children. Promoting interactions with a variety of private citizens is a way to tear down the walls segregating foster care teens from their communities and to help them become contributing members of society. We have seen this at the individual level: teens learn that there is a wide spectrum of opportunities for them, they develop a tangible image of "fitting in" to the world beyond foster care, and they begin to take on more responsibility for achieving their goals. Meanwhile, adults become interested in helping individual young people build a future and in developing new ways to support the success of more foster care teens.

few ways to start them through the process; we offer them as models based on our experience that when plans are based on the teens' own interests and goals, teens become interested in learning about how to attain the education they need, the kinds of salaries they can expect to make in their first years out of foster care, and how they will manage living on such amounts of money.

C. Accountability

The foster care system needs to go beyond merely laying the groundwork for teens to become independent. The government takes children from their families and, in many cases, from their communities, at great cost in personal trauma and public expenditure. It must be able to demonstrate that the young adults who emerge from its care are equipped to thrive at least as well as their peers who were not in foster care. The federal government, however, keeps no statistics,²¹ and what we do know about foster care outcomes is chilling.

The most recent federal study, which was completed a decade ago, found that two years after leaving the system almost half the young people who "aged out" of foster care had not completed high school and less than half were employed.²² Not surprisingly, forty percent of these foster care "graduates" had become a "cost to the community" (on either welfare or prison rolls), and only seventeen percent were completely self-supporting.²³ Similarly, a widely cited 1998 study of former foster care youth in Wisconsin found that most were discharged with less than \$250 to their names.²⁴ In a California survey of young adults recently discharged from foster care, over half reported "serious money troubles (like not being able to buy food or pay bills since leaving foster care)"²⁵

The foster care system must be fully accountable for what happens to the teens in its custody. The system now operates with little public scrutiny because it hardly ever touches the lives of the middle and upper classes, whose own children, even when they are mistreated or neglected,

²¹ See Roger J. R. Levesque, *The Failures of Foster Care Reform: Revolutionizing the Most Radical Blueprint*, 6 MD. J. CONTEMP. L. ISSUES 1, 8 (1995).

²² Carol W. Williams, *The Independent Living Program: Today's Challenge*, in PREPARING YOUTHS FOR LONG-TERM SUCCESS: PROCEEDINGS FROM THE CASEY FAMILY PROGRAM NATIONAL INDEPENDENCE LIVING FORUM, (Kimberely A. Nollan & Chris Downs eds. 2001), 1, 3.

²³ HOUSE COMM. ON WAYS & MEANS, GREEN BOOK: OVERVIEW OF ENTITLEMENT PROGRAMS, § 14 (Comm. Print 1994).

²⁴ *Post-Foster Care Independent Living Programs: Hearing on Foster Care Independent Living Before the House Comm. on Ways and Means Subcomm. on Human Res.*, 106th Cong. (1999) (statement of Mark E. Courtney, Assistant Professor School of Social Work and Institute for Research on Poverty, University of Wisconsin-Madison).

²⁵ Richard P. Barth, *On Their Own: The Experiences of Youth after Foster Care*, 7 CHILD & ADOLESCENT SOC. WORK J., 419, 424 (1990).

are almost never removed to government care.²⁶ Thus, the system is allowed to grind on—with intermittent attention to the most terrible instances of abuse of young children—while the neglect of teens that is creating many future tragedies remains largely hidden.

One immediate way to create accountability is for states and the federal government to collect and publish accurate data about what happens to young people who leave foster care, particularly in the areas of college attendance and completion, housing, and job retention. With such information, strategies and incentives to increase the effectiveness of programs for teens in foster care can be developed and assessed, and strategies that fail can be identified and discontinued. The government must be ambitious in setting standards, such as requiring a percentage of teens in agency care to complete college. Minimal levels in many areas should have to be attained or exceeded by the foster care system, or contracts for services will be terminated and new providers found. Another possibility would be to require agencies to show a rise in college completion for its foster care graduates that reaches eighty percent over a five-year period. If such achievement is not met, agencies would have to provide revised plans to reach this goal and be given another five years to meet this standard.

V. CONCLUSION

Although our first interaction with charges of the foster care system was providing them legal assistance, we soon realized that the complex needs of these teens required far more multifaceted services. Consequently, we drew on our legal educations to address foster care teens' problems on a more expansive level. We now work to effect systemic change in the foster care system so that its teens are prepared to be participating citizens. A nation dedicated to providing equal opportunity to all its citizens cannot afford to do anything else.

²⁶ See *Report of the Race, Class, Ethnicity, and Gender Working Group*, 70 *FORDHAM L. REV.* 411, 411 (2001) (citing statistics that minority children are much more likely to be taken away from their parents after confirmed abuse or neglect reports).