

FIGHTING FOR EDUCATIONAL STABILITY IN THE FACE OF FAMILY TURMOIL

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I. MY CLIENTS' STORIES

A. *Carlos' Story: Educational Disabilities, Family Court, and School Discipline*

The letter from the New York City Department of Education (DOE) addressed to Carlos'¹ mom spelled out what she had already learned when she picked Carlos up from school the previous day: Carlos had been suspended until further notice. The seven-page letter—an impersonal, wordy, boilerplate-language-laden document—explained that Carlos was suspended because his continued presence in school posed a continuing danger to students and/or teachers.² The letter also explained Carlos and his mother were entitled to a hearing to dispute the charge alleging he had engaged in a fight with another boy in his class. The letter also noted the school could seek between a thirty- to ninety-day suspension or even a one-year suspension to punish Carlos for his behavior.³

Carlos was not a typical seven-year-old second grader. Diagnosed with Autism Spectrum Disorder (ASD),⁴ Post-Traumatic Stress Disorder (PTSD),⁵ and Oppositional Defiance Disorder

¹ All names of clients have been changed to protect confidentiality.

² See N.Y.C. DEP'T OF EDUC., NO. A-443, STUDENT DISCIPLINE PROCEDURES 33–34 (2004), available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-22/A-443.pdf> (stating that the school is required to provide a student's parent with immediate notice of the suspension upon the suspension's authorization).

³ See *id.* at 27–30 (describing student behaviors that warrant a superintendent suspension, which exceeds five days).

⁴ See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS V, at 50–59 (5th ed. 2013) (diagnostic criteria for Autism Spectrum Disorder).

⁵ See *id.* at 271–80 (diagnostic criteria for PTSD).

(ODD),⁶ Carlos was very difficult to manage, particularly in a classroom with fifteen other seven-year-olds and a set of class rules governing when students can leave their desks, go to the bathroom, or speak. This was Carlos' second suspension during his second grade year and he had been suspended two times in the first grade for impulsive and aggressive behavior. These suspensions led to Carlos losing many valuable classroom hours—crucial time that should have been used to help him work on social interaction and impulse control, and time for working on the more traditional classroom tasks of improving his spelling, practicing long division, and reading *Charlotte's Web*.

Though the direct cause of Carlos' ASD, a developmental disability that hinders a child's ability to interact appropriately with others, was unknown, Carlos' PTSD and ODD diagnoses were rooted in the years of domestic violence he witnessed in his home.

This domestic violence resulted in Carlos' parents' involvement in one of New York City's Integrated Domestic Violence Courts (IDV),⁷ a court that consolidates the criminal prosecution of a domestic violence case with a connected family court proceeding under the authority of one judge. Carlos' father was prosecuted for the violence he had allegedly committed against Carlos' mother. Simultaneously, Carlos' mother petitioned the court for sole legal custody of Carlos, opposing Carlos' participation in visitation with his father.

The IDV judge was charged with the task of determining what custody and visitation arrangement was in the best interests of Carlos given the family's history of domestic violence and Carlos' needs. The judge had the difficult job of deciding whether, if she granted the mother sole custody of Carlos, Carlos' father would be able to maintain a meaningful relationship with his son, and whether Carlos would benefit from visitation with his father despite Carlos' reluctance to see his father.⁸ This proceeding was at the

⁶ See *id.* at 462–66 (diagnostic criteria for ODD).

⁷ See *Integrated Domestic Violence Courts*, N.Y. STATE UNIFIED COURT SYS., <http://www.courts.state.ny.us/ip/domesticviolence/index.shtml> (last updated Aug. 3, 2006); see also N.Y. FAM. CT. ACT § 812 (McKinney 2013) (setting out the procedures for family offense proceedings).

⁸ See *cf. In re Luis*, 847 N.Y.S.2d 835, 845–46 (Fam. Ct. 2007) (citations omitted) (stating that New York courts' "paramount concern" in making custody determinations is the best interests of the child, which requires an evaluation of the totality of the circumstances, including "the quality of the parents' respective home environments, the length of time of the existing custody arrangement, the parents' past performance and relative fitness, their ability to guide and provide for the child's intellectual and emotional development, the needs of the child, the child's wishes, as

center of this family's life for over two years, and greatly contributed to Carlos living in an unstable, unpredictable family situation—a situation that would be difficult for any seven-year-old to experience. However, for Carlos, a child whose special needs both hindered his ability to adapt to challenges and frequently led to emotional outbursts, his family's turmoil proved to be an immense obstacle that pervaded his daily functioning, most prominently in school.

Carlos' mother had been consumed by this court case and her efforts to stabilize her life after years of domestic violence victimization. These deeply personal and emotional issues, on top of her son's educational and mental health needs, caused her to become overwhelmed by the challenge of truly understanding Carlos' needs—needs that were taking a large toll on Carlos' progress in school. The school called Carlos' mother on an almost daily basis to express their frustration with his unruly behavior. Sometimes the school requested that she pick Carlos up from school because the teachers could not control him. The challenges Carlos faced in school because of his special needs, combined with his distress over his family's ongoing court case, if left unaddressed, were setting Carlos up for inevitable educational failure.

B. Tommy's Story: When Parents Are at Odds over Special Education

Tommy's parents were battling for custody of him in Bronx County Family Court for three years. During this time, each parent accused the other of child abuse and neglect. Due to the parties' attorneys' litigation tactics and the enormously high volume of cases in the family court,⁹ the judge delayed trial several times. In the meantime, as the case slowly chugged on, Tommy's hope for his parents' fighting to end seemed to disappear.

Tommy, a fifth-grader, constantly had difficulty staying focused and on-task in school. Tommy had been receiving barely passing grades each school year, read at a second-grade level, and was often reprimanded by his teachers for talking out of turn and for wandering around the classroom during class time. When

well as any possible manipulation of those wishes, and the need for stability in the child's life").

⁹ See N.Y.C. FAMILY COURT, NEW YORK CITY FAMILY COURT 2010 ANNUAL REPORT 28 (2011), available at <http://www.nycourts.gov/courts/nyc/family/2010%20Annual%20Report%20NYC%20Family%20Court.pdf> (noting that Bronx County Family Court had a total of 42,677 filings and 42,582 dispositions in 2005, 51,050 filings and 50,018 dispositions in 2007, and 57,944 filings and 57,791 dispositions in 2010).

Tommy was much younger, a psychiatrist evaluated him and diagnosed him with Attention Deficit Hyperactivity Disorder (ADHD).

The cause of Tommy's education failure became a primary issue in the custody case. Each parent pushed forth their opinion about the reason behind Tommy's challenges to bolster their own position that they were the better-fit parent to meet Tommy's educational needs. Tommy's mother claimed Tommy's ADHD constituted a disability that required special education services, while his father continually downplayed the significance of the ADHD diagnosis on Tommy's lack of academic progress. Tommy's father adamantly denied the need to "label" Tommy as a special education student, and argued Tommy's educational troubles were minimized when Tommy spent more time with him, a father who provided structure in Tommy's life.

Additionally, because neither parent had an order of sole custody of Tommy, they shared joint custody and equal decision-making rights pertaining to Tommy's education. A court's order of sole custody to either parent—which is what both parents sought—would give that parent final decision-making rights. However, the lack of such an order to either parent had made it difficult for Tommy's school to take action. Without a clear determination of which parent had final educational-decision-making rights, and because of the stark difference between the parents' opinions, the school would not evaluate Tommy without the consent of the parent that had the superior right to make education decisions. Consequently, Tommy's parents' custody dispute left him in educational limbo, which only proved to further worsen his academic challenges and delay his school's ability to address his needs effectively.

II. HOW DOES FAMILY INSTABILITY IMPACT EDUCATIONAL OUTCOMES?

Research shows that children who experience family disruption may have lower educational attainment relative to children in stable, intact families, either because of deficits resulting from the absence of a parent in the same household or because of other destabilizing changes that accompany the process of family disruption.¹⁰ Children who experience family disruption are more likely to have problems in school and are less likely to succeed education-

¹⁰ Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-being of Children: A Meta-Analysis*, 110 PSYCHOL. BULL. 26, 26–27, 36–40 (1991).

ally.¹¹ It is upon this premise that I shaped my work as an education attorney for children stuck in the middle of New York City Family Court proceedings.

I have worked with the children described above to minimize the impact of family disruption inherent to a contentious family court case, on the child's educational stability. These children are not only involuntarily subjected to experiencing the pain of family disruption, but each is also a child with special needs. My clients have mental health challenges, ASD, and severe learning disabilities. These are children whose educational progress is significantly determined by the ability of a parent or teacher to detect special needs, the quality of a school's delivery of special education services, the pedagogy designed specifically to meet the child's individualized needs, and the parents' ability to advocate on behalf of those needs effectively. A lot of collaboration and hard work is necessary to help these children succeed. However, for my clients, the interplay of family disruption, special education needs, and a community's poverty and its resulting under-resourced schools, create a perfect storm that positions my clients at the bottom of a steep educational mountain with very few of the tools necessary to begin—let alone complete—the ascent to success.

In this Article, I will discuss my work as an education attorney at the Children's Law Center (CLCNY),¹² a non-profit law firm that represents children in New York City's Family Courts. I work to ensure that my clients have access to and take advantage of quality educational services despite their daily challenges of family turmoil, special education needs, and poverty. This Article examines these specific obstacles to education my clients face and strategies that I employ to help them and their families overcome such hurdles. Additionally, I hope that my discussion will shine a light on the importance of collaboration between advocates and families, as well as the key roles advocates play in ensuring student and parent empowerment.

III. THE CHILDREN'S LAW CENTER: GIVING CHILDREN A VOICE

CLCNY fulfills the essential role of providing attorneys to represent the subject children in New York Family Court proceedings. In many New York City Family Court custody, visitation,

¹¹ See Andrew Schepard, *Taking Children Seriously: Promoting Cooperative Custody After Divorce*, 64 TEX. L. REV. 687, 703 (1985).

¹² See generally *About Us*, CHILDREN'S LAW CTR. N.Y., <http://www.clcny.org/> (last visited Sept. 12, 2013).

guardianship, paternity, and child protective proceedings, the judge appoints an attorney to represent the child, “who often require[s] the assistance of counsel to help protect their interests and to help them express their wishes to the court.”¹³

Rule 7.2 of the Rules of The Chief Judge of the State of New York explains the role of the attorney for the child.¹⁴ In these family court proceedings, where the child is the subject, the attorney for the child must zealously advocate for the child’s position.¹⁵ The Rule explains:

If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child’s best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney’s view would best promote the child’s interests.¹⁶

However:

When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child’s wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child’s wishes. In these circumstances, the attorney for the child must inform the court of the child’s articulated wishes if the child wants the attorney to do so, notwithstanding the attorney’s position.¹⁷

Rule 7.2 creates a uniquely dual purpose of the attorney, one that both obliges the attorney to advocate zealously for the child’s desires in court, and requires the attorney to assess the child’s ability to make an informed decision with respect to their emotionally charged family court cases.¹⁸ In effect, child advocacy is a unique practice that demands an attorney’s ability to understand the family dynamics of each case deeply and effectively, and candidly communicate with children of all ages.

In four out of five New York City boroughs (Manhattan excluded), CLCNY represents approximately 9,000 children annually in custody, guardianship, visitation, paternity, child support, do-

¹³ Sobie, Practice Commentary, McKinney’s Consolidated Laws of N.Y., Book 29A, Fam. Ct. Act § 241 (2013).

¹⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 7.2 (2013).

¹⁵ *Id.* § 7.2(d).

¹⁶ *Id.* § 7.2(d)(2).

¹⁷ *Id.* § 7.2(d)(3).

¹⁸ *Id.* § 7.2.

mestic violence, and connected child protective cases in New York City's Family Courts.¹⁹ Through this representation, CLCNY gives each child "a strong and effective voice in a legal proceeding that has a critical impact on his or her life."²⁰

IV. HOW DO WE HELP CHILDREN WHO ARE FAILING ACADEMICALLY?

CLCNY has represented children in these proceedings for over fifteen years, and during those fifteen years, CLCNY has developed and employed a holistic model of representation, which incorporates the expertise of skilled social workers to gain a better understanding of family dynamics and connect our clients and their families to needed services that have the potential to enhance their quality of life.²¹ CLCNY strives to represent the child holistically, in a way that extends beyond the courtroom walls. While we zealously advocate for our clients' positions in court, we also provide the resources of a social work team that works to stabilize our clients' family lives. As a legal service provider to so many New York City children each year, a few years ago CLCNY recognized a piece was missing from a more effective and complete model of representation. Although CLCNY was able to address the legal issues in family court and provide social work services, we were not addressing another crucial aspect of our clients' lives: their educational well-being.

For several years, CLCNY attorneys and social workers identified trends: too many clients were underachieving in school. Clients with Individualized Education Plans (IEP),²² in particular, were struggling the most, and were suspended from school regularly. CLCNY's clients' experiences with family disruption and turmoil were undoubtedly a strong factor in their school failure. Moreover, CLCNY's attorneys and social workers were not able to address these education issues effectively because of their high caseloads and lack of expertise in education rights. In response to this recognized educational failure among many of CLCNY's cli-

¹⁹ Dawn Post, *Don't Forget the Casualties of a Custody War*, CITY LIMITS (May 6, 2013), <http://www.citylimits.org/conversations/200/>.

²⁰ *Id.*

²¹ See *Who We Are*, CHILDREN'S LAW CTR. N.Y., http://www.clcny.org/?page_id=2 (last visited Sept. 19, 2013); see also *Client Services*, CHILDREN'S LAW CTR. N.Y., http://www.clcny.org/?page_id=5 (last visited Sept. 19, 2013).

²² See Individuals with Disabilities Education Act of 1990, 20 U.S.C. § 1414(d)(1)(A) (2012) (defining an IEP).

ents, the organization sought to incorporate an education advocacy component into its service to its young clients.

My law school internship with CLCNY turned into a postgraduate Equal Justice Works Fellowship, which allowed me to team up with CLCNY to design and implement this education advocacy project to supplement CLCNY's model of representation.²³ The project, which started in September 2011, aims to enhance educational opportunities for children at the center of family court proceedings, with a particular focus on securing special education entitlements for children with disabilities and empowering these students and their parents to be their own best advocates.

My commitment to help enhance the quality of education for children living in the low-income urban communities of New York City is rooted in my life before lawyering. For three years, I taught at a middle school in Morrisania, an under-resourced South Bronx neighborhood. Sharing the fourth floor of an imposing, block-long, pale brown, concrete complex with three other small schools, my school faced the daunting challenges of under-resourced urban education. Morrisania was, and continues to be, one of the country's poorest neighborhoods, with a median household income of around \$20,000.²⁴ Approximately twenty-three percent of the adult population residing in Morrisania holds a high school diploma.²⁵ I witnessed how the interplay of the community's high poverty and frequency of educational failure translated into low expectations,

²³ See generally *Who We Are*, CHILDREN'S LAW CTR. N. Y., http://www.clcny.org/?page_id=2 (last visited Sept. 19, 2013); CHILDREN'S LAW CENTER'S SSES PROJECT, <http://ssesproject.tumblr.com/> (last visited Sept. 26, 2013).

²⁴ See Arun Venugopal, *Census Pinpoints City's Wealthiest, Poorest Neighborhoods*, WNYC (Dec. 8, 2011), <http://www.wnyc.org/story/174508-blog-census-locates-citys-wealthiest-and-poorest-neighborhoods/> (providing a scroll-over map, which shows that Morrisania's average household income ranges from approximately \$16,544 to \$28,022 per year); see also *2007–2011 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP03 (last visited Sept. 26, 2013) (stating that the median household income for the 10456 zip code, which includes the neighborhood of Morrisania, was \$22,549 per year from 2007 to 2011); N.Y.C. DEP'T OF CONSUMER AFFAIRS, OFFICE OF FIN. EMPOWERMENT, FINANCIAL EMPOWERMENT BRIEF (2011), *available at* http://www.nyc.gov/html/ofe/downloads/pdf/fe_brief_february2011.pdf (summarizing the findings of New York City's low-income neighborhoods' access to credit, debt levels and credit card use, and financial distress, which includes Morrisania's, in comparison to the rest of New York City and the nation).

²⁵ N.Y.C. DEP'T OF HEALTH AND MENTAL HYGIENE, NYC COMMUNITY HEALTH PROFILES: TAKE CARE HIGHBRIDGE AND MORRISANIA 2 (2d ed. 2006), *available at* <http://www.nyc.gov/html/doh/downloads/pdf/data/2006chp-106.pdf> (stating that twenty-three percent of residents over the age of twenty-five in the Bronx neighborhoods Morrisania and Highbridge hold a high school diploma).

few resources, and even fewer opportunities for my students. I entered the teaching field hoping to help rewrite this narrative for the students who would sit before me in my classroom. I believed that by ensuring a quality education and setting high expectations, I could ensure that my students would graduate from high school, go to college, and defeat the cycle of poverty that held too many in their community back.

I quickly learned that it was not so easy to provide a quality education. For three years, I educated students who taught me the realities of educational inequity—how factors beyond students' control were thwarting their ability to receive an effective, sound education that would lead to long-term, positive educational outcomes. We did not have enough textbooks; we did not have a special education teacher; our hallways were filled with puddles when it rained hard enough; and mice roamed the classroom closets. I often wondered whether it was realistic to expect children to succeed in such an environment, and whether the test-driven policy-makers honestly expected teachers to meet the “challenging” standards²⁶ imposed on them while working under these conditions. These questions were neither new for my students nor for the dedicated teachers who had struggled in under-resourced schools for years. But for me, a twenty-one-year-old, newly minted college graduate who grew up in suburbia, this was an eye-opening, firsthand look into urban American poverty. I soon learned that this hope of mine—educating children *out of* poverty—was not so simple. A quality education is an essential piece to achieving this notion, but the inherent challenges caused by poverty to accessing quality education make the solution more complex.

During my time as a teacher, I identified some of the specific issues that rendered educational achievement so elusive in my school's community.²⁷ I observed how my students' community suf-

²⁶ See, e.g., No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended in scattered sections of 20 U.S.C.). The central piece of No Child Left Behind requires states to design and implement standardized testing to measure whether students in grades three through eight are meeting “challenging” state curriculum standards, particularly in the reading and math content areas. See 20 U.S.C. § 6311 (West, Westlaw through Pub. L. 113-74 (excluding Pub. L. 113-66, 113-67, and 113-73)).

²⁷ See MICHAEL HOLZMAN, SCHOTT FOUND. FOR PUB. EDUC., A ROTTING APPLE: EDUCATION REDLINING IN NEW YORK CITY 7–8 (Ann Beaudry ed., 2012), *available at* <http://schottfoundation.org/drupal/docs/redlining-full-report.pdf> (showing that students who live in low-income neighborhoods in New York City, including Morrisania, have a zero percent opportunity to attend a high-performing school); *see also* N.Y. STATE EDUC. DEP'T, THE NEW YORK STATE REPORT CARD 13 (2009), *available at* <https://reportcards.nysed.gov/statewide/2009statewideAOR.pdf> (noting that approximately

ferred from a lack of resources, a dearth of early childhood education opportunities, inadequate services to address developmental disabilities, high incarceration rates, housing instability, and family instability. These issues result in poor graduation rates, significant difficulties for children with disabilities, low levels of reading and math proficiency, and dismal college-readiness statistics.²⁸

After three years of teaching, I made the difficult decision to leave my classroom to pursue a legal career. As an attorney, I wanted to work with children and their families struggling in under-resourced communities to ensure they had access to quality educational opportunities. I began law school motivated by the urgency to expand educational access for students living in poverty, and graduated from law school with a role that bridged my experiences as a teacher with my new position as an attorney for children.

After law school, I teamed up with CLCNY to identify the pressing education issues faced by its nearly 9,000 yearly clients and devised strategies to address these issues. We quickly recognized and homed in on a pattern of academic failure amongst CLCNY's special-needs clients—clients with learning disabilities, developmental delays, speech impairments, ASD, and mental health challenges. These clients, similar to the rest of the special-needs population in New York City's public school system, underperformed and often did not graduate from high school.²⁹ We began to identify reasons for this common educational failure and found that despite the legal protections afforded to children with disabilities, these children were not always receiving appropriate special education services. Additionally, we found that children

only sixty-three percent of economically disadvantaged students graduated from high school); *see also* Michael Heise, *The Courts, Educational Policy, and Unintended Consequences*, 11 CORNELL J.L. & PUB. POL'Y 633, 644 (2002) (finding that students in high-poverty schools, particularly high-poverty urban schools, "almost always have lower levels of academic achievement than do low-poverty schools"); *see also* ANNENBERG INSTITUTE FOR SCHOOL REFORM, *IS DEMOGRAPHY STILL DESTINY?* 1, 5–6 (Margaret Balch-Gonzalez ed., 2012), *available at* <http://annenberginstitute.org/sites/default/files/Demography%20is%20Destiny.pdf> (noting that eighteen of the twenty-one neighborhoods with the lowest college-readiness rates are in the Bronx); *see also* *Attendance Stats by Borough (PAR)*, N.Y.C. DEP'T OF EDUC., <http://school.nyc.gov/AboutUs/data/stats/arreports.htm> (follow "Stats by Borough (PAR)" hyperlink) (last visited Oct. 18, 2013).

²⁸ *See* sources cited in previous footnote.

²⁹ *See* N.Y.C. DEP'T OF EDUC., *NEW YORK CITY GRADUATION RATES CLASS OF 2012* (2008 COHORT), at 11, *available at* <http://school.nyc.gov/NR/rdonlyres/31DFBEE6-2620-4792-BE7A-01B00F2E5B56/0/2012GraduationRatesPUBLICFINALWebsite.pdf> (diagramming the four-, five-, and six-year graduation rates for students with disabilities).

who had not been evaluated for special education services in a timely manner had to play a constant game of catch-up due to the years lost in learning. The complexities of the special education process and its laws overwhelm many parents, especially those of my clients, who are stuck in the turmoil of family court proceedings and do not have the time or the knowledge on how to advocate on their child's behalf. My project—bringing education advocacy to CLCNY—aims to protect these children's legal rights so that they may access an appropriate education tailored to their special needs, with the ultimate goal of a high school diploma.

V. HOW DOES THE LAW PROTECT CHILDREN WITH SPECIAL NEEDS?

In 1975, Congress enacted the Education for All Handicapped Children Act (EAHCA),³⁰ another piece of the civil rights movement that commenced with the Supreme Court's school integration decision in *Brown v. Board of Education*.³¹ The *Brown* decision held that separate classrooms for children based on the color of their skin was inherently unequal, and in effect labeled the classroom as an equal rights venue.³² Attempting to take advantage of this notion and the momentum built during the civil rights movement, disability rights advocates urged lawmakers to address the inequities in educational access for children with disabilities.³³ In 1970, only one in five children with disabilities learned alongside non-disabled peers in public school classrooms.³⁴ Congress enacted the EAHCA with the intent of including more children with disabilities in public schools.³⁵ The EAHCA mandated school districts to provide special education services and implement special

³⁰ See Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (1975).

³¹ 347 U.S. 483 (1954).

³² *Id.* at 495.

³³ David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166, 166 (1991) ("The passage of the Education for All Handicapped Children Act (EHA) in 1975 . . . resulted from changes in popular conceptions of 'handicaps,' political activism by and on behalf of persons with disabilities, recognition of the importance of public education to integrate disempowered groups into society, and an increased willingness to perceive persons with disabilities as a minority group to whom the civil rights paradigm should be applied."); see also Elizabeth Palley, *The Role of the Courts in the Development and Implementation of the IDEA*, 77 SOC. SERV. REV. 605, 607-08 (2003) (explaining how *Brown v. Board of Education* influenced court decisions on educational access for disabled children).

³⁴ U.S. DEP'T OF EDUC., U.S. OFFICE OF SPECIAL EDUC. PROGRAMS, HISTORY: TWENTY-FIVE YEARS OF PROGRESS IN EDUCATING CHILDREN WITH DISABILITIES THROUGH IDEA (n.d.), available at <http://www2.ed.gov/policy/speced/leg/idea/history.pdf>.

³⁵ 89 Stat. at 774-75.

protections designed to empower children with disabilities and their parents.³⁶

In 1990, Congress replaced and improved the EAHCA by enacting the Individuals with Disabilities Education Act (IDEA).³⁷ Congress' enactment of the IDEA expanded the rights of students with special needs granted by the EAHCA, as it provided all disabled children with the right to a "free appropriate public education . . . designed to meet their unique needs."³⁸ Additionally, the IDEA provides the framework for school districts to follow to ensure fair processes for both students with disabilities and their parents to secure meaningful involvement in the development and implementation of the child's education program.

A. Who Does the IDEA Protect and What Are These Protections?

The IDEA is a complex federal statute that has resulted in significant litigation, which in turn has further complicated legal interpretation for school districts and special education lawyers. I will boil down the IDEA's special education protections that are essential to ensuring appropriate educational services for my clients by describing which children are protected and how they are protected.

The IDEA's protections extend to children with disabilities—children classified with

intellectual disabilities,³⁹ hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to . . . as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and . . . who, by reason thereof, need[] special education and related services.⁴⁰

Once the school district evaluates and classifies a child with at least one of the above-listed disabilities, the school district must design a plan to meet the special education needs of the child—an

³⁶ *Id.* at 784–86.

³⁷ Pub. L. No. 101-476, 104 Stat. 1103 (1990). In 2004, the IDEA was reauthorized as the Individuals with Disabilities Education Improvement Act (IDEIA), Pub. L. No. 108-446, 118 Stat. 2647 (2004) (codified as amended at 20 U.S.C. §§ 1400–85).

³⁸ 20 U.S.C. § 1400(d)(1)(A) (2012).

³⁹ See *Categories of Disability under IDEA*, NAT'L DISSEMINATION CTR. FOR CHILDREN WITH DISABILITIES, <http://nichcy.org/disability/categories#id> (last visited Nov. 2, 2013) (explaining that the IDEA term "intellectual disability" is relatively new—the IDEA had previously used the term "mental retardation"—given effect by Rosa's Law, implemented by President Obama in 2010).

⁴⁰ 20 U.S.C. § 1401(3)(A)(i)–(ii).

IEP.⁴¹ The school district must then provide the special education program and/or related services outlined in the IEP.⁴² The school district's provision of an educational program designed to meet the students' needs constitutes the *appropriate* education that the IDEA mandates in its key requirement that schools provide a free appropriate public education (FAPE)⁴³ to all children with an educational disability.

Furthermore, under the IDEA, the provision of FAPE must take place in the least restrictive environment to enable disabled students to work alongside non-disabled students to the maximum extent appropriate.⁴⁴ The dual nature of this requirement is to ensure that a child with a disability receives specialized services and instruction to address his or her needs in a manner that does not relegate the child to an educational experience marred by the unfortunate stigma associated with special education, a stigma based on the historic segregation of children with disabilities from non-disabled peers.⁴⁵ Because of the IDEA's mandate that a school district provide FAPE in the least restrictive environment possible, a significant number of children with disabilities now go to public schools in their neighborhood and learn alongside non-disabled classmates. However, children whose disabilities are too severe for the neighborhood public schools may attend specialized schools at no cost to the parents. This crucial right ensures that all children with special needs, regardless of the severity of their disability, will learn in an appropriate educational setting.

B. Does the IDEA Ensure Educational Success?

The IDEA offers significant protections for the education rights of children with disabilities. However, the existence of these protections has not translated into academic achievement for the majority of the special education population in New York City's public school system.⁴⁶ Despite the protections of the IDEA, New York state law, and New York City regulations, students with disabilities have continually failed to achieve academically.

New York City's public schools educate nearly 1.1 million chil-

⁴¹ *Id.* § 1414(b)(4)–(d).

⁴² *Id.* § 1414(d).

⁴³ *See id.* § 1401(9) (defining “free appropriate public education”).

⁴⁴ 20 U.S.C. § 1412(a)(5)(A) (2012).

⁴⁵ *See id.* § 1400(d) (setting forth the purposes of the IDEA).

⁴⁶ *See supra* note 29, at 11.

dren.⁴⁷ Approximately 225,000 students, or about twenty-one percent of the district's total student population, received the DOE's special education services during the 2012–2013 school year.⁴⁸ During the same year, the DOE evaluated and recommended special education services for 15,259 more students.⁴⁹ This large portion of the New York City public school population has historically failed to achieve academic gains anywhere near their general education counterparts. For example, in 2012, the four-year graduation rate for students with IEPs was a dismal 30.5% compared to the 64.7% graduation rate of general education students.⁵⁰ These numbers show that children with disabilities in New York City continue to fall short of graduating high school. So, what is the problem? Why are these students not graduating on time? The answer involves many of the same factors that caused the educational challenges my students faced in the South Bronx.

VI. WHY ARE CHILDREN WITH DISABILITIES FAILING?

After two years working as an attorney for children, I believe there are three primary school-based factors that increase the likelihood of dropping out or aging out of high school without a diploma for my special-needs clients. First, New York City's under-resourced schools have difficulty implementing IEPs that truly address the individualized needs of students with disabilities. Second, parents, who are their children's best advocates, are confused by the DOE's complicated and ill-communicated special education rules and procedures. As a result, these parents too often have difficulty understanding their children's rights under the IDEA and become frustrated and overwhelmed navigating the process. Third, school discipline practices, like suspensions, disproportionately exclude students with disabilities from the classroom. Each of these factors, if not all three simultaneously, hinders many of my clients' paths to educational success. Further, the poverty and family turmoil my clients experience in their daily lives only exacerbate the negative impact of these obstacles. As an education advocate for my clients, it is my job to minimize these factors' negative impacts, while simultaneously striving to increase the likelihood of successful high school graduation by ensuring the implementation of suf-

⁴⁷ CITY OF N.Y., MAYOR'S MANAGEMENT REPORT FISCAL 2013, at 121 (2013), *available at* http://www.nyc.gov/html/ops/downloads/pdf/mmr2013/2013_mmr.pdf.

⁴⁸ *Id.* at 124.

⁴⁹ *Id.*

⁵⁰ *See supra* note 29, at 4, 11.

ficient IEPs, informing parents, and advocating against school suspensions.

FAPE requires schools to provide special needs children with the special education services that are designed to address their specific needs so that they will get an educational benefit from their instructional program.⁵¹ However, I have seen that schools, particularly in poor communities, are not always able to provide the special education program or service that a child's IEP mandates. For example, if a child classified with an Emotional Disturbance (ED)⁵² has an IEP that requires a crisis-management paraprofessional to work with the student one-on-one during classroom instruction to help keep him on-task and manage his or her behavior, the school *must* provide the student with that paraprofessional. I have seen financially strapped schools that do not have the money in their budgets to hire even a single paraprofessional convince instead the child's parent to consent to a change in the IEP so that it no longer mandates the child to receive one-on-one services from the crisis-management paraprofessional. In the end, rather than providing what he or she truly needs to make academic progress, the school tries its best to accommodate the child without the appropriate services—and violates the IDEA—while the child's educational well-being suffers.

The second factor that causes children with disabilities to fail is the lack of empowerment among the parents of special-needs children. New York City's special education process can be overwhelming and complicated. Many parents do not know how to request a special education evaluation when they first detect an issue with their child's learning ability. Parents have to make the time to attend several meetings, sign consent forms that can be difficult to grasp, and understand a lot of complicated special education jargon. Many parents are also not aware that they have rights once the school classifies their child with a disability. Some parents believe that school professionals should be the primary decision-makers on their child's IEP development, and that their role as parents

⁵¹ See 20 U.S.C. § 1412(a)(3)–(4) (2012).

⁵² See 34 C.F.R. § 300.8(c)(4)(i) (2013) (“Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree adversely affects a child's educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors. (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers. (C) Inappropriate types of behavior or feelings under normal circumstances. (D) A general pervasive mood of unhappiness or depression. (E) A tendency to develop physical symptoms or fears associated with personal or school problems.”).

is to simply sign the IEP without contributing any input.⁵³ When I speak with parents about their children's special needs, they are often uncertain as to what services their child is receiving. They are unsure when their child's IEP annual review will take place.⁵⁴ They often have not read their child's IEP.

I do not believe parents' lack of awareness is due to a resistance to understand their child's disability or the services required to help their child progress. Rather, the special education process is inherently complicated and schools frequently fail to communicate parents' and students' rights to the parents during the evaluation or IEP meeting stages. I also do not believe schools communicate how integral parents are in the special education and IEP development processes.

The third factor is the disproportionate number of special-needs students who are suspended from school. When a student is suspended, he or she is removed from the classroom and often spends the duration of the suspension in an alternate learning site, typically with other suspended students.⁵⁵ The DOE can suspend students of any age for one day to a year⁵⁶ for behaviors ranging from talking back to a teacher to fighting with another student.⁵⁷ During the 2011–2012 school year, the DOE suspended nearly 70,000 students. Students with special needs, comprising just seventeen percent of the total student population, accounted for twenty-nine percent of the suspensions.⁵⁸

The disproportionate number of suspensions of students with special needs is a systemic problem in New York City's public schools, which increases these children's likelihood of becoming

⁵³ *But see* 20 U.S.C. § 1414(d)(1)(B)(i) (2012) (identifying parents of a child with a disability as part of the child's IEP team).

⁵⁴ *See id.* § 1414(d)(4)(A)(i) (mandating IEP teams to review children's IEPs "periodically, but not less frequently than annually").

⁵⁵ *See* N.Y.C. DEP'T OF EDUC., NO. A-443, STUDENT DISCIPLINE PROCEDURES 19–20 (2004), *available at* <http://docs.nycenet.edu/docushare/dsweb/Get/Document-22/A-443.pdf> (explaining suspension procedures).

⁵⁶ A principal's suspension may result in a suspension period of one to five days. *Id.* at 22. A superintendent's suspension can result in a suspension period of six days to one year. *Id.* at 27, 52.

⁵⁷ *See* N.Y.C. DEP'T OF EDUC., CITYWIDE STANDARDS OF INTERVENTION AND DISCIPLINE MEASURES 17–29 (2013), *available at* <http://school.nyc.gov/NR/ronlyres/188AF3E2-F12B-4754-8471-F2EFB344AE2B/0/DiscCodebooklet2013final.pdf> (listing infractions and corresponding lists of interventions and disciplinary responses schools can use to address a student's noncompliant behavior).

⁵⁸ N.Y. CIVIL LIBERTIES UNION, A, B, C, D, STPP: HOW SCHOOL DISCIPLINE FEEDS THE SCHOOL-TO-PRISON PIPELINE 12–13 (2013), *available at* http://www.nyclu.org/files/publications/nyclu_STPP_1021_FINAL.pdf [hereinafter SCHOOL-TO-PRISON PIPELINE].

involved in the juvenile and/or criminal justice system and decreases their likelihood of graduating from high school.⁵⁹ Schools too often rely on exclusionary discipline tactics that cause more harm to students by removing them from their familiar educational settings and depriving them from their special education programs and services that they need in order to progress, rather than addressing their troubling behaviors through counseling or social work services.

Ineffective IEP implementation, lack of rights awareness amongst parents and students, and the overuse of suspensions to discipline special-needs students are crucial factors that lead to their academic failure. These factors make it that much more difficult for the special-needs population to make educational progress and ultimately graduate from high school. In addition to these already prevalent educational challenges, my clients—children who are at the center of family court proceedings—must also confront the very difficult challenge that results from the destabilizing impact of significant family turmoil on their daily lives. Consequently, my clients' educational stability often suffers from the family instability that prominently plays into their everyday lives.

VII. THE IMPACT OF FAMILY COURT INVOLVEMENT ON SPECIAL NEEDS CHILDREN'S EDUCATIONAL PROGRESS

Each child with whom I work is the subject of a family court proceeding, which can be very litigious and emotionally charged. As a result, my clients are in the middle of difficult family turmoil, with their parents aggressively vying for custody and too often pull-

⁵⁹ See N.Y. CIVIL LIBERTIES UNION, EDUCATION INTERRUPTED: THE GROWING USE OF SUSPENSIONS IN NEW YORK CITY'S PUBLIC SCHOOLS 20–22 (2011), *available at* http://www.nyclu.org/files/publications/Suspension_Report_FINAL_noSpreads.pdf (finding that students with special needs are more likely to be suspended than general-education students, and noting a correlation between suspensions, dropping out or failing to graduate on time, and involvement in the criminal justice system); ADVANCEMENT PROJECT & CIVIL RIGHTS PROJECT AT HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE 13 (2000) (footnote omitted), *available at* <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf> (“[S]uspension is a moderate to strong predictor of a student dropping out of school; more than 30% of sophomores who drop out of school have been suspended. Beyond dropping out, children shut out from the education system are more likely to engage in conduct detrimental to the safety of their families and communities. The ultimate result is that Zero Tolerance Policies create a downward-spiral in the lives of these children, which ultimately may lead to long-term incarceration.”); *id.* at n.45 (“[S]ixty-eight percent of the U.S. prison population dropped out of high school.”).

ing them in opposite directions. My clients' family court cases sometimes involve domestic violence histories, absent parents, child abuse, child neglect, drug abuse, criminal allegations, and orders of protection. Needless to say, these cases are intensely emotional for everyone involved and particularly for my clients, who are at the center of the controversy. My clients' cases can trudge through the court system for years,⁶⁰ resulting in too many of them spending half of their childhoods as the subject of court proceedings.

During these years in family court, my clients are often growing accustomed to new visiting schedules with their parents, spending time with parents they may not have known before, discussing their families and their personal lives with lawyers, ACS caseworkers, social workers, and forensic psychologists. For many of my clients, this family turmoil often translates into distractions at school, and sadness, anger, and frustration that result in poor academic progress and unruly classroom behavior. In turn, my clients often receive poor grades or school suspensions. For parents, these family court cases often overwhelm their lives, leaving less time to focus on ensuring their children's success in school.

These educational challenges, often caused by a family's lengthy court involvement, are common amongst many of our clients, but, through my work, I have seen how these challenges in particular impact clients with special needs. As an attorney at CLCNY, I have the opportunity and responsibility to help minimize the impact of family instability on my clients' educational progress and to help increase the likelihood of high school graduation for all of my clients.

The extent to which family turmoil impacts educational well-

⁶⁰ See JUDITH S. KAYE, *THE STATE OF THE JUDICIARY 2008: A COURT SYSTEM FOR THE 21ST CENTURY* 4–5 (2008), available at <http://www.courts.state.ny.us/admin/stateofjudiciary/soj2008.pdf> (“I personally have never before seen such burdens placed on Family Court, emotional burdens and calendar burdens, typically necessitating long court days and long court delays—delays that in child time are an eternity. No fair to the litigants, no fair to the courts.”); see also Joy S. Rosenthal, *An Argument for Joint Custody as an Option for All Family Court Mediation Program Participants*, 11 N.Y. CITY L. REV. 127, 136 (2007) (footnote omitted) (“Once inside the courtroom, cases are often rushed or adjourned, if they are heard at all. Cases may be adjourned for weeks or even months at a time, and litigants may be told to come back again and again. This is frustrating for those who have to work or have child-care responsibilities because they have to take a whole day off each time they must appear in court, and/or arrange for others to take care of their children. Parents have told me that they have used all of their vacation time for the year waiting in Family Court. One parent told me that she lost her job because of required Family Court appearances. What might have started out seeming like a simple matter may take months or even years to complete.”).

being of a child with a disability is often dependent on the child's disability. The negative consequences of family instability manifest in different ways in my clients' classrooms. Children with social and emotional challenges due to mental health diagnoses may have temper tantrums and aggressively act out; children with ASD may be withdrawn and disinterested with class; and children with learning disabilities may become overly frustrated and disillusioned with school because of the mounting difficulty of their schoolwork. These difficulties only grow worse if these children are not receiving appropriate special education services.

As an attorney for children who is at the center of highly emotional family court cases, one of the most common educational disabilities I encounter is ED. When a child has significant behavioral challenges that impede his or her ability to learn, the DOE typically classifies the child with an ED.⁶¹ A child with this disability typically has significant difficulty following classroom rules and may act out violently in response to being reprimanded by a teacher or teased by another student.⁶² Based on my experiences as an attorney, family turmoil that is continually a part of my clients' lives may often be the root of their social and emotional challenges. Additionally, the continued presence of a contentious family court case during important childhood development stages exacerbates his or her social and emotional challenges.

Danny, a six-year-old client classified as ED, frequently had tantrums in his classroom that included throwing himself on the floor, pushing desks and furniture across the classroom, and swinging his fists at his teachers. These behaviors led to several suspensions⁶³ and multiple 9-1-1 calls⁶⁴ resulting in visits to the emergency room for psychiatric testing. Incidentally, these behaviors primarily occurred on the Monday mornings following court-ordered alternating weekend visits with his mother. This child's behavioral chal-

⁶¹ See 34 C.F.R. § 300.8(c)(4)(i) (2013).

⁶² See *id.*

⁶³ SCHOOL-TO-PRISON PIPELINE, *supra* note 58, at 26–27.

⁶⁴ See generally Michael Winerip, *Keeping Students' Mental Health Care Out of the E.R.*, N.Y. TIMES (Apr. 8, 2012), <http://www.nytimes.com/2012/04/09/nyregion/trying-to-keep-students-mental-health-care-out-of-the-er.html> (discussing how school officials increasingly rely on emergency medical services to address behavioral issues with students due to the lack of sufficient mental health services in the school); see also Geoff Decker, *School EMS Referrals, on the Rise, Catch City Council's Attention*, GOTHAM SCHOOLS (May 1, 2012), <http://gothamschool.org/2012/05/01/school-ems-referrals-on-the-rise-catch-city-councils-attention/> (“[S]chools are too frequently referring students to EMS where school discipline is the issue, not medical or mental health treatment . . .”).

lenges grew worse as he had more visits with his mother, who had been an inconsistent presence in his life prior to the court-ordered visitation.

Danny's school reached out to both parents to discuss his behavior. In response, Danny's father blamed the mother for Danny's misbehavior, and alleged the mother treated Danny poorly, and even physically abused him, during his weekend visits with her. The mother denied all of the allegations, and claimed that Danny's behavior was rooted in his distress over having to leave his mother and return to his father's care for the week. Because each parent was focused on blaming the other, neither parent considered working with the school to develop strategies to address Danny's behaviors. Maybe Danny needed a re-evaluation to re-assess whether his current services were appropriate, or to determine whether he needed more counseling services, or a behavior intervention plan.

Instead, each exasperated parent threw their hands up, pointed fingers, and worried about building evidence against the other parent for the purpose of their family court case. As a result, Danny's needs became secondary to the parents' legal positions and consequently, his educational progress suffered—Danny missed many hours of class due to the school's strategies of excluding him from class. Further, Danny's parents were not aware of his rights as a special education student and did not feel empowered to fight for more services for Danny.

Danny's story exemplifies an unfortunate and common by-product of family court proceedings: sometimes parents vying for custody of their child become so entrenched in strengthening their legal position that their interest in "winning" the case eclipses their child's best interests. However, as parents litigate for months and sometimes even years, the child—who is at the center of this fight—often loses. In Danny's case, his parents' shortsighted strategies caused Danny's educational well-being to suffer. Further, the tension created by the family court case and the lack of consistent nurturing and care giving by his parents continued to result in negative developmental outcomes for this six-year-old child. Unlike Danny, children who have consistent and nurturing caregivers are more likely to have trusting relationships with their caregivers and others. This type of rearing leads to positive developmental outcomes, such as the social and emotional skills necessary for academic functioning.⁶⁵

⁶⁵ See Jennifer Kahn, *Can Emotional Intelligence Be Taught?*, N.Y. TIMES (Sept. 11, 2013), <http://www.nytimes.com/2013/09/15/magazine/can-emotional-intelligence->

For Danny and too many of my other clients, the lack of consistent positive parental relationships and the unstable feeling of being pushed and pulled by each parent result in low emotional intelligence, feelings of frustration, and demonstrations of negative behavior that tends to stymie their academic growth. What can we do as advocates to combat the negative impact of family instability and the lack of special education advocacy on my clients' educational outcomes that also decrease their chances of graduating high school?

VIII. STRATEGIES TO SECURE EDUCATIONAL STABILITY: ADVOCACY AND EMPOWERMENT

My role at CLCNY is to help promote educational stability for my clients, who are at a particularly great risk of educational failure because of the harmful impact of the intersection of their family instability and special education needs. I work to eliminate the risk factors that increase the likelihood of dropping out, failing out, or aging out of school, by assisting my clients and their families in attaining a level of educational stability that will promote academic progress.

Three commonly recognized risk factors that lead students to exit high school without a diploma are poverty, family instability, and the presence of a disability. Children living in poverty are five times more likely to drop out of school than children who come from higher-income families.⁶⁶ In New York City, only 11.84%⁶⁷ of students who receive special education services graduated from high school with a Regents⁶⁸ or local diploma.⁶⁹ In the same year, thirty-four percent of students receiving special education services were labeled as "drop-outs,"⁷⁰ and

[a]nother 35% of students receiving special education services who leave school are categorized as students who have "moved"

be-taught.html (explaining the positive effects of social-emotional learning on children's learning and academic achievement).

⁶⁶ Emmeline Zhao, *High School Dropout Rates for Minority and Poor Students Disproportionately High*, HUFFINGTON POST (Oct. 20, 2011, 2:22 PM; updated Feb. 14, 2012, 12:22 AM), http://www.huffingtonpost.com/2011/10/20/high-school-dropout-rates_n_1022221.html.

⁶⁷ ADVOCATES FOR CHILDREN OF N.Y., LEAVING SCHOOL EMPTY HANDED: A REPORT ON GRADUATION AND DROPOUT RATES FOR STUDENTS WHO RECEIVE SPECIAL EDUCATION SERVICES IN NEW YORK CITY 1 (2005), available at http://www.advocatesforchildren.org/sites/default/files/library/leaving_school_empty_2005.pdf?pt=1.

⁶⁸ See N.Y. COMP. CODES R. & REGS. tit. 8, § 100.5(a)-(c) (2013).

⁶⁹ See *id.*

⁷⁰ ADVOCATES FOR CHILDREN OF N.Y., *supra* note 67, at 3.

and are allegedly “known to be continuing” in some other non-DOE school (including a GED program run by the NYC DOE). This essentially means that these students have also left school without a diploma.⁷¹

Furthermore, children with different disability classifications graduate with a diploma at different rates. In 2004, ninety-six percent of students classified as having an ED, eighty-three percent of students classified as having a learning disability, and eighty-nine percent of students classified as having a speech impairment left high school without a diploma.⁷² These staggering numbers indicate that too many of New York City’s public schools are unable to provide effective special education services, if at all. Some teachers are not aware that certain students have IEPs. Some schools do not have qualified special education teachers. In addition, children with disabilities are excluded from school through disciplinary suspensions, instead of being counseled. Because of inadequate special education services, special education students frequently feel overwhelmed by school and do not work to complete high school.⁷³

After looking deeper into the specific challenges that my clients face, I have worked to develop effective strategies to minimize these risk factors that lead to my clients’ academic failures. As an attorney focusing on the education issues of children in family court cases, I strive to make sure my clients have as many tools as possible to succeed in school. To achieve this, I engage in a two-prong approach of direct client service: advocacy and empowerment. This approach works to secure immediate results—a change in my client’s special education services and school placement—and simultaneously equips the client and his or her parents with the knowledge and understanding of special education rights to empower my clients and their parents to become lifelong advocates for themselves.

A. *Education Advocacy Strategies: Secure Appropriate Services, Limit Suspensions*

My education advocacy on behalf of my clients takes on a few forms. I advocate on behalf of my young clients at IEP meetings

⁷¹ ADVOCATES FOR CHILDREN OF N.Y., *supra* note 67, at 4.

⁷² *Id.* at 2.

⁷³ See ADVOCATES FOR CHILDREN OF N.Y., SCHOOL PUSHOUT: WHERE ARE WE NOW? 1 (2008), available at http://www.advocatesforchildren.org/sites/default/files/library/school_pushout_update_2008.pdf?pt=1.

and New York City DOE hearings. Once a CLCNY attorney or social worker identifies a client's special education issue (i.e., the child's need for a special education evaluation, advocacy at an IEP meeting, working to ensure that a much-needed special education service that is not being provided is provided, suspension), that client is referred to me and I work to ensure the client's educational needs are met, while the child's family court attorney represents the child in the family court proceeding. Sometimes, if the child's educational well-being is a major issue in the family court proceeding, I appear in the family court case to help the judge understand the issue, what I am doing to remedy the problem, and argue which of either parent is better-suited to address the child's education.

The best way to describe what this advocacy entails is to revisit the stories of my clients that I shared with you.

Strategy 1: Understand the Child's Special Needs

Carlos, to remind you, was a seven-year-old second grader, diagnosed with ASD, PTSD, and ODD. Carlos had an IDEA disability classification of ED, and his IEP mandated that the DOE place him in a New York City public special education school in District 75⁷⁴ and that he receive counseling services. Carlos had been suspended from school for fighting with another student. The school was tired of dealing with Carlos' aggressive and disruptive behaviors, and sought to suspend him for ten school days, pending a hearing. When I first met with Carlos, I had difficulty believing that the child who sat in front of me, who excitedly recited facts he had just learned about dinosaurs, was in my office because he had attacked another child in his classroom.

After speaking with Carlos for about an hour, I began to understand the extent to which his parents' volatile relationship affected him. Carlos described how his father would hit his mother, how he witnessed this abuse, and how angry and sad it made him. Carlos explained how he did not want to participate in visits with his father because he was angry with him for how he treated his

⁷⁴ *Special Education District 75*, N.Y.C. DEP'T OF EDUC., <http://school.nyc.gov/Offices/District75/default.htm> (last visited Nov. 21, 2013) ("District 75 provides citywide educational, vocational, and behavior support programs for students who are on the autism spectrum, have significant cognitive delays, are severely emotionally challenged, sensory impaired and/or multiply disabled. District 75 consists of 56 school organizations, home and hospital instruction and vision and hearing services. Our schools and programs are located at more than 310 sites in the Bronx, Brooklyn, Manhattan, Queens, Staten Island and Syosset, New York.").

mother. He noted that sometimes in school, this anger took control of him and he felt like he needed to protect himself. This is what happened one day when another boy in Carlos' class teased him. Carlos lost control. He started punching the boy. I realized that Carlos' emotional challenges, and his behavior, while dangerous and wrong, could not be effectively addressed by removing him from school. It was clear to me that a suspension would not have the "lesson learned" effect on Carlos that his school intended. To the contrary, Carlos would become further disillusioned with school, and continue to feel even more vulnerable. If Carlos' needs were not addressed therapeutically, his unruly behavior would continue, increasing his chances of being suspended again, and decreasing his likelihood of academic progress and graduating from high school.⁷⁵

During that first meeting with Carlos and his mother, I learned more about Carlos' special education needs, and we agreed that Carlos' current school situation was not working—his behavior and the school's approach to address his behavior (suspensions), created significant obstacles to his academic progress. Carlos spent more time serving suspensions than he did working with a counselor or a school psychologist. Carlos told me he would often get frustrated and bored at school because the work was too easy, and when he became bored he was easily distracted by other students. Carlos also explained that he would become angry when other children teased him or the teacher made him do something he did not want to do. He said that he would get especially angry when, during class, he thought about the way his father treated his mother when they all lived together.

Carlos' mother explained Carlos' intellectual functioning was above average, but that he had a lot of trouble controlling his behavior because of his PTSD and ODD diagnoses. A therapist who evaluated Carlos believed that Carlos' experience of witnessing domestic violence between his father and mother was the root cause of his diagnoses. The three of us discussed how it would be beneficial for Carlos to be placed in a different school that focused on emotional challenges and provided more effective psychological services.

Strategy 2: Advocate at the Suspension Hearing

The next step in my advocacy was to represent Carlos at a

⁷⁵ See *cf.* N.Y. CIVIL LIBERTIES UNION, *supra* note 59, at 20–21.

DOE superintendent's suspension hearing, presided over by a DOE hearing officer, with the goal of getting Carlos back into school as quickly as possible. In all New York City DOE suspension hearings, the school must prove its case by direct evidence that the child engaged in the behavior that resulted in the suspension.⁷⁶ Therefore, as long as the school provides at least one witness who can credibly testify that he or she observed the child's offense, the likelihood that the superintendent will uphold the suspension is high.⁷⁷ In Carlos' case, Carlos' teacher, the school's lone witness, testified that Carlos, after being teased by another student in class, "lost it," and started punching and kicking this student. As a result of this straightforward testimony, Carlos' fifteen-day suspension was upheld.

Because the suspension was upheld, Carlos was entitled to a Manifestation Determination Review (MDR) pursuant to the IDEA, to determine whether his aggressive behavior that led to him hitting his classmate was a manifestation of his disability.⁷⁸ This meeting was held two days after the suspension hearing at Carlos' school and was facilitated by the school psychologist. I attended the meeting along with Carlos' mother and his teacher.

At the MDR, I sought to demonstrate that Carlos' school was not effectively addressing his social and emotional needs, and as a result, his academics were suffering. I argued Carlos' ED classification clearly was the root of his aggressive behavior and that his current special education program failed to meet his needs. I noted that his current special education program at a New York City DOE public special education school was not appropriate given his significant emotional challenges. The school psychologist agreed that the fight was the result of Carlos's ED. I also requested that the school schedule an IEP meeting to discuss a reassessment of Car-

⁷⁶ *In re Bd. of Educ. of Monticello Ctr. Sch. Dist. v. Comm'r of Educ.*, 91 N.Y.2d 133, 140–41 (footnote omitted) (1997) ("The decision to suspend a student must be based on competent and substantial evidence that the student actually participated in the conduct charged, but the burden of proof and evidentiary rules imposed in a school disciplinary proceeding are not as stringent as in a formal trial. In a school disciplinary proceeding the evidence may consist of hearsay, and reasonable inferences drawn by a Hearing Officer will be sustained if the record supports the inference.").

⁷⁷ *See id.*

⁷⁸ *See* N.Y.C. DEP'T OF EDUC., NO. A-443, STUDENT DISCIPLINE PROCEDURES 10–12 (2004), available at <http://docs.nycenet.edu/docushare/dsweb/Get/Document-22/A-443.pdf> (explaining when and how a school holds a Manifestation Determination Review).

los' current special education program and to consider whether he should be placed in a more appropriate setting.

Strategy 3: Advocate at the IEP Meeting

I attended Carlos' IEP meeting and advocated that based on Carlos' significant behavioral problems in his current special education program, he needed more therapeutic assistance coupled with more behavior supports at a school that focused on the needs of children with ASD and mental health diagnoses. If Carlos remained in the current program, the DOE would not be providing Carlos FAPE. The IEP team agreed, noting that Carlos' lack of progress in the current program indicated that his needs were not met. The team amended Carlos' IEP to mandate placement in a private special education school designed to address the needs of children with social emotional needs similar to Carlos'.

Today, Carlos is progressing academically, receives essential counseling services and participates in behavior management seminars, and has not been suspended since entering his new school. Carlos really needed these services, and in his new school he is now receiving them. Carlos is learning how to control his anger that stems from the turmoil between his parents. Because Carlos' school life is much more stable now than it was prior to his involvement with CLCNY, his chances of graduating from high school have increased. I continue to monitor Carlos' progress, and I will participate in his annual IEP reviews to ensure that he stays on-track toward high school graduation.

B. Parents as Advocates: Strategies Aimed to Empower the Parents of Special Needs Children

The other component of my strategy to ensure educational success for my clients is empowering my clients and their parents. I work with my clients and their parents to help them understand their rights, created from and protected by the IDEA, so they have the knowledge necessary to be empowered advocates.

One of the most important aspects of my job is to help parents understand their child's disability, their child's education rights, and their own rights so that they can be lifelong advocates for their child. I will only be able to advocate on behalf of my clients for a finite period of time. However, my clients' parents can advocate for my clients throughout their academic careers. Parents will always be their children's best advocates. This section will point out strategies to help attorneys, social workers, and professionals who work

with children with educational disabilities empower parents to be advocates.

Strategy 1: Help Parents Understand that Special Education
Is a Benefit, Not a Label

Many parents perceive special education as a label that they are reluctant to tag their child with, rather than a service designed to help their child succeed in school. When I encounter a parent who has this misperception, I try to help them shed the notion that special education will do more harm for their child than good by helping them understand that their children may learn differently and that certain supports are essential to help them learn.

I often work with clients who have yet to be evaluated, but whose teacher suspects that they have an educational disability. Sometimes parents of my clients resist consenting to an evaluation because of the fear that an evaluation of their child will forever label their child and set them on a track destined for educational failure. What these parents do not understand is that if their child does not receive these supports now, educational failure will almost be a certainty. In these cases, I strongly urge parents to consent to the evaluation, explaining that the evaluation's purpose is to help parents and their teachers learn more about the child's academic levels and needs and to assess whether there are special education services that will support the child's academic progress.

The evaluation itself does not automatically result in the child's receipt of special education services, but will provide the IEP team—a team composed of the child's parents, teachers, and a DOE representative—with essential information about the child's academic strengths, weaknesses, and whether there are indicators suggesting the presence of an educational disability. Rather, as I explain to my clients' parents, the decision to classify a child with an educational disability and to develop an IEP occurs after the evaluation, at an IEP meeting during which the child's teacher's input, the parent's input, and the results of the evaluation are all considered. Finally, I help parents understand that they make the ultimate decision on whether the child will receive special education services, regardless of what the evaluation and IEP determine.

Without an evaluation, a parent might not learn that their child has dyslexia, an ED, or another type of disability. I also try to curb a parent's reluctance to having his or her child evaluated by describing how it is essential for his or her child's academic future to truly understand his or her child's needs.

Once the IEP team, including the parents, agrees that the child has an educational disability, the IEP team develops an IEP for that child. Contrary to many parents' belief that once a child has an IEP, they will forever have one, I explain to parents that the IEP team will review the child's progress and that team will update the IEP according to that progress, decide whether to maintain the current special education program, or whether to declassify the child because he or she no longer needs special education services if that child has made significant progress.

I emphasize to parents that the school will review the child's IEP each year, adjust the IEP according to the child's needs that were determined during that review, and end the child's special education services if the team determines the child no longer needs them.⁷⁹ Parents should understand that the implementation of an IEP requires the school to track the child's progress in a very focused way and that the school must keep parents involved in this process. The IDEA grants many rights to parents of special-needs children, and as long as parents understand this, they will be empowered to advocate for their children.

Strategy 2: Encourage Parents to Learn About Their Child's Disability

When it comes to the special education process, I cannot overemphasize the importance of parental knowledge. When my clients are classified with an educational disability, I help their parents understand what the disability means by providing them with information⁸⁰—DOE resources about the special education process, information about the specific disability, and instructional strategies designed to address the specific learning needs associated with the disability. As a former teacher, I can offer instructional techniques to parents when helping their children with homework. As a lawyer, I advocate for the necessary special education services to be included in the child's IEP. The more my clients' parents know and understand their children's needs, the better equipped they will be to advocate for the services necessary to help their children succeed.

This notion of parent as advocate was highlighted for me during my first year as a sixth grade teacher. One afternoon early in

⁷⁹ See 20 U.S.C. § 1414(c)(1)(B)(i) (2012).

⁸⁰ See generally *National Dissemination Center for Children with Disabilities*, NICHCY, <http://nichcy.org/> (last visited Dec. 4, 2013) (providing an example of a type of resource the author provides to his clients' parents).

the school year, the mother of one of my students approached me. She handed me a book about ADHD and said, "I'm not sure if you knew this, but Tara has ADHD. It affects everything she does. She takes medication, and it's important that you know the best ways to teach her." Tara's mother then described the specific behaviors I should expect to see in the classroom, and told me examples of strategies she uses to manage those behaviors at home. I was impressed with Tara's mother's knowledge of her eleven-year-old daughter's ADHD, that she was able to describe in detail the behaviors that I was already noticing, and the strategies she offered to address those behaviors in my classroom. She wanted to ensure that I had sufficient information to instruct Tara so that Tara would succeed. Tara's mother was the advocate that all of my clients' parents can be. Part of my job, as an advocate for my clients, is to empower their parents to be advocates as well.

Strategy 3: Explain the IDEA Rights to Parents and Clients

The DOE's special education process is composed of several steps from the evaluation to the implementation of services and parents must understand each step clearly in order to have a firm grasp of their and their child's rights in the process. The DOE provides a packet of information, entitled the Procedural Safeguards Notice,⁸¹ which outlines parents' rights once they consent to a special education evaluation. This forty-two-page document provides the parent with crucial information including how to request an evaluation, how many days the DOE has to conduct the evaluation, develop an IEP, implement services, and what options a parent has if he or she does not agree with the DOE's recommendations. However, I have found that many of my clients' parents have not read the document in its entirety, and even if the parents do, they do not always have a grasp on their rights and their child's rights as a special education student because the document is difficult to understand. As a result, I often describe the rights outlined in the procedural safeguards notice in detail during meetings with parents and my clients to make sure they understand their rights.

The key to parental empowerment is knowledge. Parents who are armed with a deep understanding of their child's needs and their rights, can be powerful advocates who can ensure that their

⁸¹ See generally N.Y. STATE DEP'T OF EDUC., PROCEDURAL SAFEGUARDS NOTICE (2007), available at <http://school.nyc.gov/NR/rdonlyres/FA85382D-1EAB-4C93-9F1F-E710D28024C1/0/Proceduralsafeguardsenglish.pdf>.

child's school provides the services necessary for academic progress.

IX. MY ADVOCACY AND EMPOWERMENT STRATEGIES AT WORK

These strategies aimed to empower parents were essential in helping to ensure that Tommy—my fifth grade client with ADHD I discussed earlier—received the special education services necessary for him to learn and that his parents truly understand his needs and become his very best advocates. To remind you, Tommy's parents had been the litigants in a lengthy custody battle, and one of the major issues in their case was their disagreement over whether Tommy should be formally evaluated for an educational disability.

Tommy's father was adamantly opposed to labeling his son as a special education student, even though Tommy was reading at a second grade level in the fifth grade and had a lot of difficulty focusing and staying on-task during class. On the other hand, Tommy's mother was very overwhelmed with Tommy's lack of educational progress and believed Tommy needed more support in school. However, Tommy's mother was not sure how to get this support and was not sure whether Tommy should be evaluated for special education.

My advocacy on behalf of Tommy began by looking into whether Tommy's ADHD was truly the cause of his significant academic difficulties, and whether he would benefit from receiving special education services. I read through his psychiatrist's evaluations that led to his ADHD diagnosis, and spoke with his teachers, and both of his parents about Tommy's behavior at home. Based on these documents and the information I learned through my conversations, it appeared that Tommy should be evaluated by the DOE to determine whether he needed special education services.

The next step was to clear up the issue of educational decision-making rights between the parents in family court. Advocating to ensure that Tommy received appropriate services at school, I collaborated with Tommy's family court attorney and advocated for Tommy by explaining to the family court judge that Tommy's mother should have temporary educational decision-making rights at least during the pendency of the custody trial so the school could evaluate Tommy and develop an IEP. After arguing in court that Tommy's academic failures were likely attributable to the absence of Tommy's receipt of special education services—by pointing to his significant academic struggles and their correlation to his ADHD diagnosis—the judge agreed to grant temporary educa-

tional decision-making rights to Tommy's mother so that Tommy could be evaluated.

I then worked closely with Tommy's mother to help her understand both how special education services would help Tommy progress and her rights in the special education process. Additionally, I worked to help Tommy's father shed his idea that Tommy's receipt of special education services would forever cast a cloud on his ability to learn. I explained that Tommy's ADHD made it very challenging for Tommy to learn in his current classroom environment and that he simply needed more individualized attention and less distractions to progress academically. In the end, I explained the services would help Tommy, and a continued denial of these needed supports would only continue to result in more academic challenges for Tommy. Tommy's father reluctantly agreed that an evaluation might help Tommy.

After Tommy was evaluated, I helped his mother understand what would occur at the IEP meeting, described the possible special education programs and services that Tommy might benefit from, and encouraged her to advocate for what she believed Tommy needed to succeed in school. At the IEP meeting, both Tommy's mother and I advocated for Tommy to be placed in a smaller class setting with a special education teacher and a one-on-one paraprofessional who would keep him on-task during class, by citing his ADHD as a primary contributing factor to his history of academic failure. Tommy was in serious need of more support, and the school's representatives, Tommy's teacher, and the assistant principal, agreed that a smaller special education class was appropriate for him. Tommy's mother consented to Tommy's placement in a special education class with the support of a one-on-one paraprofessional, and the school placed Tommy in that setting.

After receiving these supports, Tommy found it easier to focus in class. He had moved from a classroom filled with twenty-seven students to a class less than half of that size and received much more individualized attention from both his paraprofessional and his teacher. Not only did Tommy begin to progress academically, but he also became more comfortable at school. Tommy even told his mother that he loved his new class. Both Tommy's mother and father now have a better understanding of Tommy's needs and are better equipped to advocate on behalf of Tommy throughout his school career.

Tommy's story demonstrates that parents entrenched in their positions during emotional family court proceedings can lose sight

of their children's educational needs. It also shows that a parent's fear of a special education label might be rooted in not truly understanding his or her child's needs and/or what special education really means. Most importantly, it demonstrates that effective education advocacy can help parents overcome their positions and misperceptions and become empowered to ensure that their child receives needed educational support.

CONCLUSION: MY CLIENTS, DESPITE MANY CHALLENGES, CAN
SUCCEED IN SCHOOL

My clients face significant obstacles to educational achievement—family instability, educational disabilities, exclusionary school disciplinary practices, and poverty. Each of my clients has the potential to succeed if they are given the appropriate supports from their parents, teachers, and the school system, which is also tasked with the challenge of ensuring a quality education for all of its students. However, it is essential to understand that significant work is required to overcome the predominant obstacle of poverty to ensure this success. Educational achievement, high school graduation, and entry to higher education remain elusive because too many children from low-income communities often do not have access to a quality education.

Nearly six decades have passed since the Supreme Court held that separate educational facilities for children based on the color of their skin are inherently unequal in *Brown*,⁸² and inequality, specifically related to socioeconomic status, in public schools persists. Also, despite efforts by the New York State Governor's Office, policymakers, and litigation to ensure an adequate level of funding equity throughout New York City's public schools,⁸³ the gap in educational achievement between children from low-income communities and their middle and upper class peers is vast.⁸⁴ For children

⁸² *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

⁸³ See *Campaign for Fiscal Equity, Inc. v. State*, 8 N.Y.3d 14, 14–24 (2006).

⁸⁴ Gail Robinson, *Class in the Classroom: The Income Gap and NYC's Schools*, CITY LIMITS (Sept. 25, 2013), <http://www.citylimits.org/news/articles/4936/class-in-the-classroom-the-income-gap-and-nyc-s-schools> (comparing standardized test results in English and math between poor and affluent New York City districts, such as Manhattan and South Bronx, and finding that poor districts had significantly lower test scores). Robinson writes:

On the 2013 state standardized math tests, admittedly a flawed measure due to the generally poor results, District 2 students [which includes many of the wealthiest areas in Manhattan] fared the best, with 60.2 percent getting the 3 or 4 (on a scale of 1 to 4) to qualify as "proficient." Only 17 percent of District 8 students [located in the southeast corner

living in low-income communities, there is a connection between educational failure and juvenile/criminal justice system involvement⁸⁵ that contributes to the ongoing cycle of poverty in which educational success is a necessity to combat.⁸⁶ Education advocacy is an important component in securing quality educational opportunities that can lead to academic achievement.

For my clients at CLCNY, many of whom live in under-resourced communities, the family turmoil that brings them to our offices only seems to complicate the issue of attaining a solid education in poverty-stricken communities. The family instability and the lengthy family court cases that my clients are involved in provide significant stressors in their lives that destabilize their educational progress. My advocacy over the past two years has secured appropriate special education services for my clients, limited the amount of class time they miss because of suspensions, and empowered overwhelmed parents to advocate.

In only two years, CLCNY's newly developed dedication to education advocacy has significantly increased the scope and quality of its representation of children. Our clients, whose families choose to utilize the legal system to resolve their issues and engage in the lengthy, emotionally challenging court process, frequently struggle in school. Our provision of services to these children living with family instability ensures their voices are heard in their family's legal proceedings, their emotional issues are addressed by our social workers, and their chances of achieving academic success and graduating from high school are increased.

of the Bronx] did that well, and its neighbor—District 7 in the South Bronx—had the lowest scores with only 9.5 percent 'passing' the exam. Middle-income District 30 was in the middle—with 35.4 percent of children getting 3s and 4s. The English test scores followed a similar pattern. . . .

. . . .

The achievement gap between the rich and poor in city schools is no doubt narrower than the actual disparities among income classes because the most affluent families in New York opt out of public schools—and the standardized testing found there.

Id.

⁸⁵ ADVANCEMENT PROJECT & CIVIL RIGHTS PROJECT AT HARVARD UNIV., *supra* note 59, at 11.

⁸⁶ See Ronald Lee, *A Helping Hand: Full-Service Community Schools as a Model for Educating Low-Income Children*, 12 GEO. J. ON POVERTY L. & POL'Y 135, 138 (2005) (footnotes omitted) ("[H]igh school dropouts are 72% more likely to be unemployed and earn 27% less than high school graduates. They are less able to contribute effectively to society and more likely to add significant burdens to the corrections and welfare systems. To end the poverty cycle, it is critical to lower the dropout rate and improve employment prospects for these students.").

Equal access to education for all children continues to be one of our nation's most pressing civil rights issues. It is our job as advocates to work with families, children, and schools to help solve this issue given the current systemic challenges, high levels of poverty, and situations in which we find our clients. While we cannot readily change school funding issues or quickly fix all problems associated with poverty, we can strive to ensure that our clients receive the special education services they are entitled to; spend more time in the classroom and less time suspended from school; and participate in mental health services, afterschool programs, and tutoring that will lead to successful educational outcomes. Despite the significant challenges my clients face, I continue to believe that all children can achieve in school. I have seen the results of the advocacy and collaborative efforts among attorneys, social workers, teachers, and parents who work to make educational success, no matter the child's socioeconomic status, family situation, or disability, a reality.

