



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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My name is Jessica Marcus and I am a supervising attorney at Brooklyn Defender Services' (BDS) Family Defense Practice. I thank the New York City Council, and in particular the Committees on General Welfare, Women's Issues, and Juvenile Justice, for the opportunity to testify today.

BDS is the largest Brooklyn-based legal services provider, representing **45,000** low-income Brooklyn residents each year who are arrested, charged with abuse or neglect of their children or face deportation. Our interdisciplinary staff provides supplemental legal and social services on-site in the areas of immigration, education, housing, and government benefits. Our family defense practice is assigned to represent parents and care givers in **1,000** new child welfare cases each year, the majority of the respondents in Brooklyn Family Court. Now in our 8th year, we have represented over **6,400** parents and caregivers and currently represent over **2,000** parents. Using an interdisciplinary model, BFDP has advocated for the safe return of over **6,000** children to their families. BFDP's mission is to defend the due process rights of low-income parents while helping them access the benefits and services they need to remain stable and keep their children safe.

Although there has been much discussion about the disproportionate impact of race in the family court and child welfare system, there has been little acknowledgment that most of the respondents in family court are eligible for assigned counsel due to their poverty. Over 90 percent of the child protective cases filed by the Administration for Children's Services ("ACS") are based on allegations of neglect and the vast majority of these cases are caused or exacerbated by the family's poverty. Most of these cases represent a failure of the City's safety net systems for poor children and families – public and other subsidized housing, public assistance, health care, and mental health care systems – to truly support families in need. The City can save money and reduce foster care placements by putting systems into place that address the needs of these families. The City Council, ACS, and the Department of Homeless Services (DHS) should examine how these systems work, identify how to make them work more efficiently, and address the barriers that exclude families who need these services which would result in fewer families entering the child welfare system and save the City scarce dollars.

Our experience working with a large number of families involved in child welfare cases in family court provides valuable information about how limited resources are being expended by the City. ACS child protective workers continue to routinely mandate services, such as mental health evaluations, therapy, or parenting classes, which are unnecessary or not carefully tailored to meet the particular needs of the family, even though many of these interventions have not been proven effective by evidence-based research. In addition, child protective and foster care agency workers are rarely sensitive to the barriers families face in accessing these services or able to help families access them. Services are often scheduled during a parent's work hours forcing parents to choose between fulfilling a service requirement and losing a job. Oftentimes, parents are asked to attend services but no transportation or child care is provided, making it difficult to comply.

I. RECOMMENDATIONS FOR THE ADMINISTRATION OF CHILDREN'S SERVICES

A. ACS Must Involve Stakeholders in the Development of any new Training Program

We understand that the Mayor has proposed earmarking significant new funds for the training and professional development of front line child welfare staff. We wholeheartedly agree that increased training for case handlers and supervisors is a critical piece of an overall strategy for improving case work practice. We understand the challenges that case workers face in achieving the delicate balance of ensuring child safety while providing services and assistance to keep families together. In order to create a training program that actually achieves a significant change in culture, we believe that ACS should be partnering with community based groups, parents, children and advocates for parents and children to better understand the problems faced in case work practice, which go far beyond the tragic fatalities that we hear about in the press. If the City invests substantial funding in ACS's enhanced training program, a key metric for success must be public accountability to those most impacted by the child welfare system.

In addition, we believe that training must include a cultural competence component to address the lack of sensitivity that our clients face when case workers perform home

investigation or family monitoring, including best practices training for working with families where English is not the parent's primary language.

We also firmly believe that workers and supervisors should be trained to help our clients navigate the systems they interface with on a daily basis, including the shelter system, public assistance, SSI, Office of People with Developmental Disabilities (OPWDD), Medicaid and mental health care systems and as discussed below, should be trained on the rights of people with disabilities.

Recommendation: Any funds that are provided to NYCCS for training should require community involvement in the development and implementation of a training program, such as the creation of an advisory board that includes consumers, outside service providers, and advocates. The training curriculum should include cultural competence, training about the systems that affect poor families and training on disabilities as discussed more fully below.

B. ACS Should Revise Its One-Size-Fits-All Approach to Mental Health Issues

We are grateful that in 2013, ACS promulgated *Principles to Inform Child Welfare Decision-Making Regarding Mental Health Issues*. Yet we continue to see many problems persist, including the overuse of mental health assessments in situations where they are not warranted, including where there are no allegations of mental illness. In addition, we are concerned about ACS's improper reliance on mental health assessments which do not meet the minimum professional standards and do not provide useful information about parenting abilities. These assessments are then relied on inappropriately to mandate treatment and make decisions about visiting and reunification. We are also concerned about the widespread practice of mandating therapy and requiring disclosure of information from therapists, which little respect for the impact this has on the patient-therapist relationship.

Finally, children diagnosed with mental illnesses are often placed in foster care due to a parent's difficulty in coping with their child's mental health condition, often because of language barriers or lack of education, yet the child doesn't receive the services they need while they are in foster care. Foster care agencies, through their Therapeutic Foster

Boarding Home programs, provide specialized training and supports to foster parents caring for children with special needs, but parents are rarely offered the same type of training and support.

Recommendation: ACS and foster care agency workers need to be better trained on mental health issues, including their own guidelines, and ACS should work with the Department of Health and Mental Hygiene to examine closely the resources and services that are available in communities to ensure that families receive services that are carefully tailored to meet their families' needs so that children do not enter foster care because they or their parents have not received appropriate mental health services.

C. ACS Must Better Serve Clients with Intellectual Disabilities

We are concerned about the number of clients we see where the only allegation against them in their Article 10 case is their cognitive delays; these cases represent a failure of the system. ACS should not be filing neglect cases against these families but should be working with the appropriate City and State agencies to ensure that they get the ongoing support and services that they need. Very often the families have received inadequate and insufficient evaluations. Although these families can function independently with ongoing supportive services, the services that child protection currently offers these families, such as short term preventive services, are inadequate and inappropriate to meet these families' needs. In a letter dated January 29, 2015, the U.S. Department of Justice (DOJ) found that the Massachusetts Department of Children and Families (DCF) had violated the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 193 by denying a mother with developmental disabilities opportunities to benefit from support and services to achieve reunification. Among other things, the DOJ found that DCF failed to *provide appropriate policies and training for social workers to understand their obligation to ensure the civil rights of parents with disabilities.*

Recommendation: Where a parent presents to ACS with a possible intellectual disability, ACS should assess whether the parent is receiving any supportive services related to the perceived disability, coordinate the referral and evaluation process for the parent to receive

appropriate services, and provide transitional services to the parent until those disability-related services are put in place. The process of applying for state assistance through OPWDD can be difficult to navigate, and ACS should be familiar with this application process and assist parents with establishing their eligibility. ACS staff should be trained in reasonable accommodations that people with intellectual disabilities may need, such as more time allotted for case conferences and casework contacts, more specific assistance with traveling to appointments and time management, and in-services and classes that are available for parents in this population.

D. ACS Should Re Examine Policy Regarding Marijuana Use

The majority of substance abuse allegations in our cases are based on marijuana use. Even though marijuana possession is legal in New York, ACS prosecutes parents for marijuana use, often without obtaining a professional assessment as to whether that use constitutes a serious addiction that directly causes harm to the children. This practice is an unnecessary use of scarce resources. ACS should be focusing on cases where drug addiction is demonstrated to be harmful to children. We have many cases where children remain in foster care even though the only issue is ongoing positive tests for marijuana.

Recommendation: ACS should examine its approach to cases involving allegations of drug use and develop policies and practices to ensure that ACS intervenes and files a Family Court case only where there is actual evidence that a parent's drug use is harming or poses a risk of harm to the children and referrals for costly, time consuming treatment programs are made only when unnecessary. Children should not remain in foster care solely on the basis of positive tests for marijuana where there is no evidence that the parent was under the influence in the presence of the children.

ACS should train workers on the nature of addiction and about harm reduction programs that use a public health approach, identify drug treatment programs that provide services in the home or outside work hours and permit families to continue to reside together so that a parent does not have to choose treatment over his or her family and children are not unnecessarily placed or remain in foster care because a parent needs treatment.

E. ACS Should Further Reduce Traumatic Emergency Removals of Children

Since August 2010, BFDP has been advocating with ACS to cease their illegal practice of removing children without court order in situations where there is time to seek a court order. Oftentimes, children are removed from their homes on an emergency basis only to be returned by a family court judge who later hears the application, causing unnecessary trauma of removal to the children. In addition, there is often a delay in coming to court because child safety conferences are held first. We are grateful that ACS issued a new protocol and training program to guide case workers in February 2011, but we are concerned that the practice of removing children without court order persists.

Recommendation: ACS should continue to ensure that all of its workers are trained to follow the emergency removal protocol and consider eliminating child safety conferences in certain cases.

F. ACS Should Provide More Meaningful Preventive Services

BDS strongly supports funding preventive services to prevent the need for children to be placed in foster care and to reduce the time children spend in care. In large measure, preventive service programs helped reduce the foster care population from almost 40,000 in 1999 to under 12,000 in New York City today¹. Keeping families together with services in place, instead of placing children in foster care prevents the harm and trauma of removing children from their families while saving tax-payer money.

We also believe that preventive service programs can and should be delivered more effectively to help families provide safe and stable homes for their children and to reduce the number of children who enter foster care.

1. Monitoring requirements limit the effectiveness of programs and restrict the amount of time preventive service programs can work with families

In our experience, the role of preventive services agencies has become more to *monitor* families or act as another arm of ACS in assessing safety and risk in the family, rather than take

¹ ACS website, Statistics and Links

significant steps to meaningfully assess and address the problems families face in maintaining stability. For example, although preventive services regulations direct agencies to assist families with basic necessities, such as food, clothing, and housing, very often preventive service workers only remind parents that they must address these issues or monitor their efforts without actually helping them to eliminate obstacles to obtaining these necessities, such as providing transportation costs or childcare, or offering real assistance to help them navigate the many complex bureaucracies and agencies necessary to secure assistance. In the past, for example, agencies have funded parent advocates to help navigate these systems but such programs do not appear to exist anymore at preventive service agencies.

Preventive service workers' time with families tends to focus on completing required home and school visits and on documentation requirements rather than creating individualized service plans with families and developing meaningful, trusting relationships over time. With the advent of evidence-based preventive services programs, cases are often prematurely closed because they have reached a certain time frame – even when families continue to struggle with long-term problems such as cognitive disabilities – doing a disservice to both the family and the program.

Recommendation: Where specific needs and goals are identified, the primary role of the preventive agency should be to ensure that identified goals are reached. Casework should be measured by whether goals have been reached and cases should be closed upon successful provision of services, not when a time-frame has been met.

2. Formulaic services do not take into account the complex needs of each family

The regulations implementing the preventive services law require that social services districts provide concrete assistance, including childcare, transportation, homemaking, emergency funds, and housing assistance to families who need these services to prevent removal of their children. Yet most preventive agencies provide the same set of interventions to families regardless of their actual needs. Most often these one-size-fits-all solutions are comprised of generic “casework contacts,” where workers visit homes periodically and require families to attend appointments at the agency office.

Most parents are also required to attend standardized parenting and anger management classes and counseling sessions. But not all parents in need of preventive services need counseling or parenting skills classes—some are simply struggling financially and need concrete help to meet their children’s needs. Requiring families to attend numerous appointments and classes simply adds unnecessary stress, making it even more difficult for parents already struggling to provide for their children. Families who could benefit from more concrete services such as childcare, transportation, homemaking or housing assistance are offered classes and counseling sessions instead. As a result, children are unnecessarily removed from their families and placed in foster care.

Recommendation: Preventive workers should provide counseling to families on relevant issues which would streamline services for families who are juggling to complete various programs while also tending to their employment, school and other obligations.

3. Delays in assigning preventive services to families in need can contribute to additional problems

Delays in assigning preventive agencies and workers to families often exacerbate families’ problems. Indeed, the lag between need identification and service provision often spans months. In some cases, this gap between identification and provision results in ACS filing neglect cases. For example, in one neglect petition alleging inadequate housing conditions and leaving an 11-year old alone with younger children, ACS made a removal application where there had been a prior agreement to arrange preventive services that were not put in place in a timely manner. Because the delays in arranging preventive services are well-known in Family Court, judges are often reluctant to return children to their families, regardless of whether there is a plan that preventive services will quickly respond to the families’ service needs, leading to children staying in foster care for longer than necessary.

Recommendation: Preventive workers should be immediately assigned in all cases where families indicate they are willing to participate in preventive services. Worker performance should be assessed on the time between identification of family needs and the uptake of provided services.

II. RECOMMENDATIONS FOR COORDINATION BETWEEN THE ADMINISTRATION OF CHILDREN'S SERVICES AND THE DEPARTMENT OF HOMELESS SERVICES

Over a third of our clients are living in unsafe housing, family shelters, doubled up, and/or are moving from place to place. Lack of adequate housing makes it difficult for clients to comply with mandated services, causing children to be placed in foster care and/or delaying family reunification when children are already in foster care. Rather than assist families in advocating for safer living conditions or addressing housing concerns directly, ACS workers frequently suggest that families leave homes deemed to be in poor condition (including NYCHA apartments) to go into the shelter system. While this suggestion meets many of ACS' short-term goals for ensuring a safe environment for children, there are long-term negative consequences for family stability: the shelter system no longer provides permanent housing options to families; living in many of the family shelters in New York is harmful to children and families²; and such a move often disrupts children's education.

ACS is required by law to provide families with preventive services to keep children safely with their families and prevent unnecessary foster care placement, which is both traumatic for children and costly for the City. Among the services that ACS is required to provide are emergency shelter and permanent housing assistance. Yet in practice, when ACS identifies inadequate housing as a risk factor for a family, case workers rarely offer any assistance beyond a direction to apply for shelter at the PATH center, the Bronx office where all families must go to apply for shelter from DHS. Once there, families who have been told by one City agency, ACS, that they must enter shelter as a condition of keeping their children in their care, are often told by a different city agency, DHS, that they are ineligible for shelter because DHS does not believe that the family is really homeless. Sometimes DHS tells a family to return to the very same housing that ACS has already determined to be inadequate or unsafe for the family. In other cases DHS rejects a family for failing to provide proof of prior residences, even in cases in which ACS has documentation of where the family previously lived. Thus, both

² See "New York City Department of Investigations: Probe of Department of Homeless Services' Shelters for Families with Children Finds Serious Deficiencies." <http://www.nytimes.com/interactive/2015/3/12/nyregion/report-on-violations-in-homeless-shelters.html>

agencies are failing in their legal responsibilities to families - ACS by failing to provide shelter in a manner that actually prevents foster care placement, and DHS by failing to provide shelter to families who demonstrably have nowhere safe to go. When one City agency - ACS - insists that a family's living conditions are so harmful to children that the family must enter the City shelter system, giving up all community ties and any sense of stability, it is simply unconscionable that another City agency - DHS, which is tasked with helping families who have nowhere safe to go - would simply turn them away on the grounds that they already have a place to live.

A. ACS Should Advocate with DHS Regarding Eligibility Issues

ACS directs often families to enter the shelter system as an alternative to having their children removed, or as a condition of children being returned to their parent. Even in these circumstances, our clients are frequently found ineligible by DHS after initial 10-day placements, which require the family to reappear at PATH in the Bronx, usually upon less than 24 hours' notice, in order to reapply. In many cases our clients have had to repeatedly reapply after being found ineligible based upon a failure to provide a two-year housing history of residences they cannot return to, even where court orders prevent the family from residing at any of their prior residences or specifically require the family to seek shelter through PATH in order to keep their children.

For example:

- 1) Our client's daughter was released by Kings County Family Court to our client's care on December 19, 2014 on the condition that she go to PATH, which she did a few days later. She was provided with an overnight placement and went back to PATH the next day when she was placed at the 515 Blake shelter in Brooklyn. About ten days later she received a letter informing her that she was ineligible for shelter because she could not provide proof of where she had been previously living. She had been renting a room from a friend who would not confirm to DHS that our client had been living there because she feared she would jeopardize her housing as she was illegally renting the room. However, when our client was residing at this address, her foster care case planner visited her there and could have corroborated this. Our client asked the case planner for a letter but she never provided it, nor did she contact DHS on our client's behalf. When our client was found ineligible the first time, she reapplied for shelter and was once again placed at 515 Blake. Ten days after that she received another letter indicating she was ineligible for shelter for the same reason. She got frustrated and told ACS she couldn't deal with PATH anymore because she kept being*

found ineligible for shelter. She was told if she didn't enter the shelter system, ACS would have to seek a removal of her daughter. Our client decided to return to PATH on January 12, 2015 at which time she was placed in a shelter in the Bronx, but she got lost. It was late and her daughter had a cold so she dropped off her daughter at her mother's home. ACS then filed to remove her daughter. After a hearing, the Family Court placed her daughter in foster care finding that "PATH is a broken system." The child's placement in foster care could have been avoided if ACS and PATH had coordinated their services.

- 2) *Our client moved from New York to Connecticut in the summer of 2014, and gave birth to a newborn son in December 2014 via extremely traumatic C-section while residing in a Catholic pregnant women's shelter in NYC. The shelter offered to allow our client to reside there with her baby after the baby's birth, but they did not allow the male ACS worker access to the shelter. ACS sought removal of the newborn based on allegations relating to our client's child welfare history in Connecticut. The Judge released the child to our client on the condition that our client enter PATH and comply with all shelter rules and regulations, as well as an order that our client not leave the jurisdiction of New York City. Our client was placed in shelter in Far Rockaway but was found ineligible twice in a row, requiring her to transport her newborn son all the way from Far Rockaway to the Bronx while still in recovery from her C-section, and in extremely cold weather, to discuss her housing history in Connecticut, a state to which she was prohibited from going by the Family Court Order. ACS failed to advocate with DHS to explain that this client could not return to Connecticut due to the Family Court order and failed to work to contact the CPS equivalents in Connecticut to assist with providing an accurate two year housing history. Further, after insisting that our client enter PATH, ACS refused to assist our client with moving any of her belongings from the pregnant women's shelter to the family shelter in Far Rockaway, and the belongings were lost.*

Recommendations: ACS and DHS should work together to ensure that ACS-involved families have streamlined and collaborative eligibility reviews, with relevant court orders and eligibility-related information possessed by ACS made available to DHS staff immediately.

B. School-Aged Children should not be required to go to PATH for application or subsequent re-application

Although there has been some discussion about changing this policy, DHS still requires all members of a household, including school-aged children, to be present at the PATH intake center on the day of the family's initial application, as well as any subsequent re-applications that are necessary because a family was found ineligible. If the policy has been changed, we

have yet to see written documentation of the policy change and the specifics of the new application procedures that we can share with our clients.

The current practice forces parents to choose between sending their child to school or seeking adequate shelter for the night. Parents who wait until after the school day to travel with their children to the PATH center in the Bronx arrive late in the day and are often provided only “overnight” placements until they can formally apply for shelter the following day. Under current policy, these overnight placements do not count as shelter applications for purposes of identifying all of the family members, and so the children must either miss school the next day or the family cannot apply for shelter.

This practice is unnecessary and harmful to children already in vulnerable circumstances. DHS can and should develop a policy to verify the existence of school-aged children in other ways, such as consulting records kept by the Department of Education, ACS, or sending a DHS worker to meet with the family in their shelter placement outside of school hours. Additionally, many family shelters are staffed by personnel who could document and report back to DHS the existence, age, and identity of school-aged children upon checking into the shelter on the very day they are placed.

Recommendations: DHS should commit to a written policy that school-age children need not be present at PATH during initial shelter applications in all cases. Further, ACS should be fully informed and trained of any policy shift.

C. Expand Functions of ACS Office at PATH

There is an ACS office within the PATH intake center, but its function at this time is limited predominantly to verifying whether ACS is investigating or involved with any particular family that is either applying to PATH for shelter or that has been identified as a potential housing resource to an applicant family. This is a huge missed opportunity for ACS to provide comprehensive support to families, particularly those already involved in the child welfare system, at the very stressful and crucial time of a PATH application. Given how time consuming it is to apply for shelter at PATH, ACS or foster care workers rarely accompany families to apply,

and when they do, rarely stay for the full application process to ensure that the family is provided a suitable shelter placement, despite the fact that families with knowledgeable advocates fare far better in the application process. A well-staffed and efficient ACS office at PATH would better serve ACS-involved families.

Recommendations: The ACS office within PATH should function as a first stop for families that are already involved with child welfare upon their arrival at PATH, where they can check in with knowledgeable ACS liaisons and receive valuable support. These liaisons should be in communication with the field workers familiar with the family, flagging issues where the family requires advocacy and assistance, and sharing documents or advocacy letters from field ACS workers to DHS staff. Where ACS, through their own investigation, has found a home or homes in the family's "prior housing history" to be unsuitable or unsafe for the children, the ACS liaison should share those findings with DHS staff and provide documentation facilitating the eligibility decision. The ACS liaisons should similarly assist in decisions regarding shelter placement to ensure that the children's educational, medical, mental health and service needs are being met. The ACS office at PATH should further assist ACS-involved families in applying for transfers within the shelter system, adding newborn or newly reunified children to the household, and in other circumstances where ACS is in a unique position to provide necessary information to DHS staff in order to streamline the provision of services to needy families. This office should serve as a much-needed support to homeless ACS-involved families and should receive training from advocates. We have heard that ACS is going to place additional workers at PATH but we have been calling for this for many years.

D. The City Must Advocate for Increased Preventive Housing Subsidy:

Although there is a state mandated preventive housing subsidy, the \$300 per month subsidy rarely, if ever, succeeds in preventing the need for foster care or in reunifying families when housing is a barrier to family stability.³ The housing subsidy has become a meaningless

³ Social Services Law section 409-a (5)(c) provides for the provision of a housing subsidy in the amount of \$300 per month for up to three years when "a lack of adequate housing is the primary factor preventing the discharge of children from foster care." Section 409-a(7) further provides for the same subsidy in cases in which "a lack of

entitlement due primarily to the exceedingly low monthly \$300 monthly rate. The housing subsidy amount has not been increased since the subsidy was first enacted into law in 1988 ---- almost 30 years ago. Today, rental amounts in New York City are an average of over \$1,200 per month⁴ yet most of our clients' household income is well below this amount. In addition, during the period 2000 – 2012, median apartment rent amounts in New York City rose by 75 percent⁵ while the subsidy amount stayed the same.

In our experience, preventive services workers and even ACS workers are generally unaware that the subsidy even exists, and those who are aware of it explain that it is not a useful tool for keeping children out of foster care. Not only is the \$300 rate inadequate, but the procedure for obtaining the subsidy is so lengthy and cumbersome that even if a family is lucky enough to find an apartment that can be rented with the subsidy, a landlord is unlikely to be willing to wait the time it takes to receive payment. Even workers who are aware of the existence of the housing subsidy are often unaware that it can be used to provide families with lump sum payments for rental arrears, repairs, and other one-time expenses to help a family obtain or preserve stable housing. As a result, preventive workers often advise families to enter the shelter system — an intervention that is far more costly and harmful to family stability — instead of assisting them in preserving stable permanent housing.

A substantially higher and more easily accessible preventive housing subsidy would make an enormous difference in preventing children from entering foster care and reducing children's length of stay in foster care.

Recommendations: ACS and DHS should be working closely with other government agencies, including HRA, NYCHA, and HPD to develop real solutions to the lack of permanent housing options for poor families - one of the most prevalent and pervasive issues in child welfare cases.

adequate housing is a factor that may cause the entry of a child or children into foster care and the family has at least one service need other than lack of adequate housing.”

⁴ NYU Furman Center, State of New York City's Housing and Neighborhoods in 2013, pg. 32.

⁵ Office of the NYC Comptroller, Scott M. Stringer, The Growing Gap: New York City's Housing Affordability Challenge (April 2014).

The City should be advocating with the State to increase the housing subsidy substantially if it is to actually reduce the amount of time children spend in foster care as a result of the lack of adequate housing and the amount should be commensurate with the increase in rental prices.

ACS should renew a housing collaboration with advocates, community partners and other government agencies to ensure that children are not placed in foster care, and do not needlessly remain in foster care, as a result of the lack of housing resources.

Conclusion:

BFDP's proposals would not only strengthen the system in these key areas, ensuring that children are able to remain with their families in safe, secure and stable environments, but would also help enable the child welfare system to leverage available resources in the most cost-effective and impactful ways possible. We believe that following these suggestions will result in more stable families with access to the resources they need.