



TESTIMONY OF LAWYERS FOR CHILDREN

To the New York City Council Committee on General Welfare

“Oversight: Racial Disparities in the Child Welfare System”

October 28, 2020

Submitted by:

Karen J. Freedman, Executive Director
kfreedman@lawyersforchildren.org

Betsy Kramer, Director of Policy & Special Litigation
bkramer@lawyersforchildren.org

Thank you, Chair Levin and the General Welfare Committee for holding this hearing and providing us with the opportunity to testify.

Founded in 1984, Lawyers For Children is a not-for-profit legal corporation that represents individual children in voluntary foster care, abuse, neglect, termination of parental rights, adoption, custody and guardianship proceedings in family court, and advocates for system-wide reform to improve the lives of children in foster care. On average, we represent children and youth in more than 6,000 court proceedings each year. Based on our experience in individual cases, we have also successfully participated in numerous class-action lawsuits and helped to effectuate change in City and State policies and practices to promote positive outcomes for all children in foster care.

We are pleased that the Council continues to focus on the critical issue of racial disparities within the child welfare system. As attorneys and social workers who directly represent children involved in that system, we share your commitment to tackling this issue, and believe that it can be done while keeping children safe from harm.

In order to answer the question of how to alleviate the insidious overrepresentation of children of color in the child welfare system, we must look at the front door to that system, as well as what happens to children and families after they have stepped inside.

Narrowing the Front Door:

Reducing Bias Influence in Mandated SCR Reports

We join the City and our colleagues in recognizing the work done during the last several years to safely reduce the number of children in foster care -- from over 50,000 children in care in the 1990's to under 8,000 today. Over the last ten years, the number of children in care has decreased by 50%. That decline reflects a recognition of the harmful impact that even a short stay in foster care can have on a child, as well as the positive impact of the successful implementation of increased community-based family support.

While the number of children in foster care has declined dramatically during the last several years, the number of Black and Latinx children brought to the front door of the child welfare system through reports to the Statewide Central Register of Child Abuse and Maltreatment (SCR) has remained essentially unchanged. In 2009, ACS investigated 55,303 reports made to the SCR.¹ In 2019, the number of investigated cases rose slightly to 57,000.² Notably, 77% of the children who were the subject of

¹ ACS Child Welfare Indicators Annual Report 2009, Available at https://www1.nyc.gov/assets/acs/pdf/data-analysis/City_Council_Report_2009_Annual.pdf

² Citizens' Committee for Children, Keeping Track Online, The Status of New York City Children, Child Welfare, 2020 available here: https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf

those reports were Black and Latinx although those children made up only 58% of the City's population.

A discussion about racial disproportionality in child welfare must include all aspects of child welfare involvement – not just foster care placements -- because the impact of a child protection investigation, regardless of its necessity, can be traumatic for children and have far reaching consequences. Once a report is received, caseworkers may be dispatched to interview children in the middle of the night. Children may be pulled out of their classrooms in front of their peers for questioning. They may be subject to physical exams, and temporarily removed from their families. All of these actions, even if the report is ultimately “unfounded” can have a lasting, negative impact on a young child.

Black and Latinx children are overrepresented in calls to the SCR, in part, because reporters of suspected maltreatment fall victim to the same biases affecting people working within the system. Research shows that although Black children are far more likely to be reported for suspected abuse and neglect than white children, they are, in fact, no more likely to actually have been maltreated children.³

A majority of SCR reports are made by “mandated reporters” -- teachers, doctors, social services workers, and others who are required, by law, to report suspected maltreatment. Of the 16,907 reports received by the SCR for investigation in 2018, 11,894 were made by mandated reporters.⁴ Mandated reporters play an important role in protecting children who are victims of maltreatment. However, according to national data from the U.S. Department of Health & Human Services, close to 7 out of 10 reports made by mandated reporters are unsubstantiated.⁵

In this respect, the problem of racial disproportionality does not fall solely on ACS. The vast majority of SCR reports are made by employees of City agencies, including the Department of Education, the NYC Health and Hospitals Corporation, the Department of Homeless Services, and the Human Resources Administration. As such, those agencies play a significant role in the overrepresentation of children of color in the child welfare system. In order to reduce that overrepresentation, action must be taken to ensure that decisions about whether to call in a report of suspected maltreatment are not influenced by racial bias. It has been said that a White child who appears at a hospital with a broken arm goes home with a cast and a lollipop, but a Black child who appears at a hospital with a broken arm goes home with a cast, a lollipop and a CPS investigation. In order to change this narrative, mandated reporters must be trained in

³ Hyunil Kim and Brett Drake, “Child maltreatment risks as a function of poverty and race/ethnicity in the USA,” *International Journal of Epidemiology*, Vol. 47(3), 780-787 (June 2018), available here:

<https://academic.oup.com/ije/article/47/3/780/4829682> (highlighting that at similar poverty levels, White child maltreatment rates based on official reports trended higher than Black child maltreatment rates)

⁴ See ACS Flash Report, January 2020 at 27, Figure 1: SCR Intakes by Reporter Group, October 2018 – December 2018 and October 2019 – December 2019, available at:

<https://www1.nyc.gov/assets/acs/pdf/data-analysis/flashReports/2020/01.pdf>

⁵ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2010). Child Maltreatment 2008 at 8. Available at: http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can.

racial equity, perception, and implicit bias to ensure that decisions about whether to call in a report are based solely on objective factors of risk.

Offering Alternatives to Support Children & Families

ACS has made tremendous progress expanding primary prevention and preventive services, increasing the use of community-based services and supports to assist families outside of the foster care system. Other City agencies responsible for providing services to children must also recognize the role they play in funneling Black children into the child welfare system, and the ways in which they can assist families without making a report to the SCR. We are not the first to say that poverty is the biggest driver of reports to the SCR, and that a lack of resources is the biggest threat to the health and safety of children who become entangled in the child welfare system. Now it is time to engage all of the other City agencies to train their mandated reporters to consider whether a referral to a food bank, a day care provider, a mental health service, an afterschool program or any other community-based support could eliminate the perceived risk and do away with the need to make a call to the SCR. This is the only way to begin to transition from the role of mandated reporters to mandated supporters.

Improving Child Welfare Interventions

Providing Support for ACS's Newly Expanded (and renamed) CARES Program

Even after a report is made to the SCR, there is an opportunity to provide assistance without involving the family in a child welfare case. Just last week, in announcing that ACS was expanding and renaming the Family Assessment Response program, ACS Commissioner David A. Hansell said, "Often times, families reported to the New York State child abuse hotline are simply in need of a helping hand — whether that's food, clothing, or extra support." The newly christened "CARES" program recognizes that poverty, oppression and racial inequity are often factors that lead to reports to the SCR, and significantly reduces the number of children who enter foster care or are brought into court proceedings.

Without launching a traditional investigation, the CARES program engages families in supportive services that enhance their ability to care for their children. Specially trained child protective staff members partner with the family to identify their needs, make decisions about how best to address those needs, and connect to appropriate services.

For many years, the success of the PINS diversion program has proven that assessing a family's needs and providing services that are designed to meet those needs can go far toward ensuring children's safety and improving family stability, while dramatically reducing court involvement and the number of children placed out of their homes. It is a model that can and should be adopted for child welfare cases.

Implementing "Blind Case" Removals

In addition to being the subject of a disproportionate number of reports to the SCR, Black children are further over-represented in the number who are removed from their families and placed in foster care. Less than a quarter (22%) of New York City children are Black, but more than half of the children in ACS custody (54%) are Black.⁶ To reduce this disparity, steps must be taken to address the ways in which racial bias impacts removal decisions. One way to do this would be to adopt a “blind removal” strategy. In “blind removal” case reviews, identifying information such as the child’s racial identity, name and neighborhood are removed from the case file before a committee of child welfare professionals assesses the need for removal. The assessment focuses on what has occurred, relevant case history, family capacity and strength. In 2010, 55.5 percent of the removals made in Nassau County were of black children. By 2015, after using blind removals, that figure dropped to 29 percent.⁷ The experience of Nassau County is a stark reminder of the tremendous role played by bias in removal decisions and the consequent over-representation of children of color in the foster care system.

Strengthening Standards for Child Welfare Frontline Workers

Decisions about whether to indicate cases and whether to remove children from their homes should be made only by workers who are well-trained to make decisions based on articulated risk factors. Lawyers For Children has previously testified regarding the importance of enhancing the qualifications, training and recruitment of Child Protection Specialists, but our position bears repeating here. The critical assessments made by CPS workers require an understanding of safety and risk, childhood development, trauma, and the complex challenges that families experience. These assessments require highly trained professionals who are most able to ascertain key facts, effectively interview children and families, use engagement techniques and synthesize all of the relevant information. For these reasons, we support efforts by the City to increase salaries and qualifications for child protection staff, and to enhance training and support opportunities for advanced degrees and credentials.

Recommendations to the City Council

We urge the City Council to:

1. Data & Reporting:

⁶ Citizens’ Committee for Children, Keeping Track Online, The Status of New York City Children, Child Welfare, 2020 available here: https://www.cccnewyork.org/wp-content/uploads/2020/03/2020-CCC-Keeping-Track_forweb.pdf

⁷ See Jessica Pryce, “The Case for Race-Blind Foster Care Removal Decisions,” *Imprint News*, January 13, 2020, available here: <https://imprintnews.org/opinion/the-case-for-race-blind-foster-care-removal-decisions/39898>; see also Jessica A. Pryce, et. al., “Race Equity: Nassau and Onodaga County Report,” December 2016, available here: <https://www.nassaucountyny.gov/DocumentCenter/View/18095/FINAL-OCFS-Report-Race-Equity-2016?bidId=>

- a. Require ACS to provide data on the number of substantiated and unsubstantiated reports made by mandated reporters disaggregated by the report source, the child's race, and community district.
 - b. Require ACS to report on its efforts to reduce racial disparities and collaborate with mandated reporters to reduce unnecessary calls and promote alternatives.
2. Require City agencies, including the Department of Education, Health and Hospitals Corporation, and Department of Homeless Services, to implement training for mandated reporters in racial equity, perception and implicit bias with respect to child welfare matters.
3. Provide support for ACS to implement innovative programs designed to reduce racial disparities in removal decisions.
4. Provide support for ACS to strengthen qualifications for frontline ACS child protection workers.

Conclusion

Dismantling racial disparities within the child welfare system requires taking a close look at the system's front door. For too long, this door has been thrown wide open, unnecessarily drawing in Black and Brown children and their families. It is now time to close that door to all but those who truly need the assistance of the child welfare system, preserving precious resources for children who are truly at risk of harm and preserving stability and providing community-based supports for children who are not. We urge the City Council to take steps to encourage the City's child-serving professionals outside of ACS to help open the door to community-based support and resources available to families in need.

We look forward to continuing our work with the Council to identify solutions and reduce racial disparities in the child welfare system.