



TESTIMONY OF LAWYERS FOR CHILDREN

To the New York City Council Committees on General Welfare

“Oversight: The Nicholas Scoppetta Children’s Center”

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Thank you Chair Levin and the Committee for holding this hearing about the ACS Children’s Center 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. This year, we will represent children and youth in more than 6,000 court proceedings. 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 good outcomes for all children in foster care.

We are pleased that the Council has chosen to focus on issues at the Children’s Center and hope that this hearing will lead to greater accountability for the care and treatment of children who are placed there.

Kenneth’s Ordeal at the Children’s Center: What No Child Should Endure

The plight of our client Kenneth, (whose case gained the attention of the media this past March¹), highlights many of the most serious problems that have arisen because ACS operates the Children’s Center completely unchecked. Kenneth, was 17 years-old when he entered foster care. He was placed at the Children’s Center because ACS failed to find an appropriate foster care placement for him.² He remained there for a year, in conditions that are hard to believe actually exist in 21st Century New York City. Kenneth, who is not ambulatory, was without an operable wheelchair for the better part of the year, was not given proper medical treatment, and was not provided with necessary services, including occupational, speech and physical therapy. Kenneth described sitting in his own urine on his broken wheelchair and, wearing clothes and shoes that did not fit him. ACS failed to provide Kenneth with the most basic services despite numerous court orders directing the agency to meet his needs. ACS’ failures were so egregious and so inexcusable that a Family Court judge took the rare step of holding the agency in contempt.

¹ Melissa Russo, Kristina Pavlovic, ACS Held in Contempt for Neglecting Wheelchair-Using Teen Soaked in His Own Urine (March 14, 2019), <https://www.nbcnewyork.com/news/local/ACS-Held-in-Contempt-for-Failing-to-Care-for-Wheelchair-Bound-Teen-Soaked-in-His-Own-Urine-506827971.html>; Michael Fitzgerald, Is New York State Responsible For Some Long Stayers at the City’s Temporary Foster Home? City Child Welfare Commissioner Thinks So, *The Chronicle of Social Change*, (March 29, 2019) <https://chronicleofsocialchange.org/featured/new-york-childrens-center-child-welfare-commissioner/34364>.

² Matter of Kenneth R., 2019 NY Slip Op 29042 at 4 (Family Ct. NY County. Jan. 28, 2019), available at: http://nycourts.gov/reporter/3dseries/2019/2019_29042.htm

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Kenneth’s experience highlights many of the systemic problems with the Children’s Center, and we urge the Council to enact stronger oversight mechanisms so that no child will ever experience the kind of horror that Kenneth was forced to endure.

Children’s Center Licensing & Oversight

Operating without a regulatory framework, oversight, or accountability has greatly contributed to the Children’s Center’s ongoing problems and has resulted in its failure to meet the needs of too many children entrusted to its care.

When the Children’s Center opened in 2001, it was mostly heralded as a welcome relief from its predecessor facilities. According to a *New York Times* report on the occasion of the Children’s Center opening, however, the problems we are facing today were predicted from the very beginning. The reporter explained, “Some child welfare veterans see dangers in the very spaciousness and beauty of the new building, that it will become a place where too many children will be kept for too long.” But Commissioner Scoppetta “vowed that the new shelter will not become a shelter or orphanage. ‘We are absolutely, unequivocally opposed to that,’ Mr. Scoppetta said. ‘If a kid stays more than 24 hours, it’s only because it’s a very difficult placement.’”³

Of course, those skeptics were incredibly prescient. Staying longer than 24 hours is no longer unusual. Rather, 72 hours is the time by which “most young people” are discharged, according to Commissioner Hansell’s March testimony before the Counsel.⁴ Even so, ninety children or more regularly spend the night in the Children’s Center. Many of those children stay for weeks on end. Some, like Kenneth, stay for more than a year.

While the Children’s Center functions as both a shelter for children who stay for just a few days and as an orphanage for children like Kenneth, it does not appear that it is required to comply with the regulatory framework governing either shelters or residential placements. It does not appear that New York State Office of Children & Family Services (OCFS) has licensed this facility or that OCFS or any other agency has any oversight over the Children’s Center’s operations.

Furthermore, whether our clients are placed in foster homes, group homes or residential treatment centers, Lawyers For Children attorneys and social workers are regularly welcomed to meet with them in their placements. They are invited

³ Nina Bernstein, New Center for Foster Children Echoes Changes in an Agency, *The New York Times*, June 1, 2001, p. B3.

⁴ *New York City Council Budget and Oversight Hearings on the Fiscal Year 2020 Preliminary Budget* Before the City Council Committee on General Welfare, March 25, 2019 (Statement of Commissioner David A. Hansell, Administration for Children’s Services)

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into our clients’ homes and permitted to see where they are living, where they are sleeping, and whether they have appropriate clothing in their closets. These visits allow us to inform the courts that our clients’ needs are being met in their homes. At the Children’s Center, however, children’s attorneys and social workers are routinely denied access to our clients’ living spaces. This further limits opportunities for oversight and hampers our ability to represent our clients.

Lack of Placements

Earlier this year, Commissioner Hansell and Deputy Commissioner Farber explained to the Council that there is a shortage of foster care placements for older children, children with developmental disabilities and children with serious mental health challenges, which has led to those children staying at the Children’s Center for extended periods of time.⁵ ACS has expressed its frustration, asserting that many of these children’s needs should be met in either the New York State Office of Mental Health or the New York State Office of People with Developmental Disabilities systems.⁶ This is not a new argument. More than ten years ago, ACS filed a lawsuit seeking to force OPWDD to provide care and services for developmentally disabled children who had been placed with ACS. For more than ten years, ACS has been litigating that case to no avail.

Children should not be caught in a turf battle. It is now time for ACS to stop denying responsibility for these children and start providing them with appropriate placements and services.

Today, there is no reason to think that there is a greater number of older children, developmentally disabled children or children with complex mental health needs in foster care compared to when the Children’s Center first opened. And, yet, approximately the same number of children spend the night at the Children’s Center when there were 31,000 children in foster care⁷. Where have all of those placements gone?

Inadequate Services

Children who spend extended periods of time at the Children’s Center are not only deprived of a home. Unlike other children in foster care, they have not historically been assigned a case planner, whose job is to ensure that all of the child’s educational, medical, mental health and physical needs are being met. Without a case planner, there is nobody assigned to make diligent efforts to work with the child’s family or other resources to try to effectuate the child’s discharge from foster care.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3

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New York State regulations spell out the staffing requirements for group homes and residential placements serving children with higher needs. The regulations set minimum standards for child to staff ratios, required professional personnel, and staff qualifications. The regulations are designed to ensure that placements serving children with higher needs employ a sufficient number of clinicians and professional staff who meet regularly with the children and provide coverage when a crisis occurs. They also set forth the required minimum contacts that the case planner must make with the child and the child’s parent each month, to ensure that the child’s needs are being met and that appropriate plans are being developed to address the causes of the child’s foster care placement. The Children’s Center does not seem to be bound by those requirements, despite caring for some of the highest needs children in foster care.

Because of this, children like Kenneth are not getting the attention they require and languish without receiving desperately needed services. It is imperative that every child at the Children’s Center be assigned a case planner who is trained to identify service needs, arrange for appropriate evaluations, ensure that the child (and the child’s family) is connected to therapeutic interventions, and who will work with the family toward an appropriate permanency goal.

Preventing Criminalization of Young People

We are particularly concerned that in order to address some of the problematic behaviors of children at the Children’s Center, ACS has chosen to increase the presence of “ACS special officers to provide additional security,”⁸ rather than to increase the use of social workers and other therapeutic staff. We share the goal of ensuring that the Children’s Center is a safe place for all children and young people who reside there. However, we want to ensure that law enforcement is not unnecessarily involved in situations that can and should be handled by quality social work practice. “When law enforcement is brought into a non-life-threatening situation with a foster child, the caregivers and the already traumatized children are likely to see the crisis escalate rather than stabilize.”⁹ Studies have shown that police intervention in non-criminal matters involving foster children “only worsened their precarious situations.”¹⁰ Unfortunately, youth in foster care do not easily recover from being detained by the police. An in-depth report on the criminalization of youth in foster care found that “the experience of being arrested, handcuffed and jailed, even briefly, can have lasting impact, from deepened trauma to greater odds of a criminal future.”¹¹

⁸ *Id.* at 4

⁹ County Welfare Directors Association of California, *Family Urgent Response System for Foster Youth and Caregivers* (Apr. 2018), https://www.cwda.org/sites/main/files/file-attachments/ab_2043_fact_sheet_website.pdf.

¹⁰ Karen de Sá, *et al.*, *Chronicle Investigation: Fostering Failure Dubious Arrests, Damaged Lives*, San Francisco Chronicle (May 18, 2017), <https://projects.sfchronicle.com/2017/fostering-failure/>.

¹¹ *Id.*

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For these reasons, ACS must only be permitted to invoke security personnel and law enforcement to address issues at the Children’s Center when absolutely necessary.

Recommendations

We urge the City Council to exercise its oversight authority over ACS to impose a measure of accountability upon the agency. To that end, we suggest that the City Council exercise its oversight authority by requiring ACS to provide the City Council with the following:

1. Data, including but not limited to:
 - Numbers of children at the Children’s Center each night;
 - The length of stay for each child at the Children’s Center;
 - The number of children placed at the Children’s Center who are non-ambulatory;
 - The number of children placed at the Children’s Center who have been diagnosed with an autism spectrum disorder and other developmental disabilities;
 - The number of children placed at the Children’s Center who have been diagnosed with complex mental health needs;
 - The steps being taken to develop additional foster care capacity for developmentally disabled children, children with complex mental health needs; and older youth; and,
 - The staff employed at the Children’s Center, including job title, minimum qualifications and responsibilities.
2. A policy outlining how case planning and medical, educational and other therapeutic services are to be provided for children who spend more than 24 hours at the Children’s Center;
3. A protocol for involving law enforcement/security personnel only when absolutely necessary.
4. A protocol for permitting children’s attorneys and social workers to observe their clients’ living quarters.

We further urge the City Council to provide ACS with additional funding to ensure that ACS properly cares for all children there by employing a sufficient full-time staff with the training and expertise appropriate to care for developmentally disabled children and children with complex mental health needs. This would include, for example, case planners, certified social workers, behavior modification specialists, and education specialists.

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Conclusion

Thank you for your attention and commitment on this issue and to young people in foster care. We are happy to follow-up with you on any questions you may have about our testimony and to assist the Council in developing legislation that will help create oversight/accountability measures for ACS.