

The Education Crisis for Children in the California Juvenile Court System

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Introduction

In all the debate about the burgeoning number of youth incarcerated in the California juvenile justice system or living in foster care because of abuse and neglect, few have recognized the growth of an immense, insidious crisis affecting the children supervised by the juvenile court.¹ The crisis lies in the overwhelming number of children – court dependents and delinquents alike – who suffer from educational deficiencies and disabilities.² The disturbing fact is that most of these children do not receive the special education and other

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1. The Juvenile Court has jurisdiction over three types of cases: (1) Juvenile Delinquency (*See* CAL. WELF. & INST. CODE § 602 (Deering Supp. 2001)), (2) Status Offenders, such as truants and curfew violators (*See* CAL. WELF. & INST. CODE § 601 (Deering Supp. 2001)), and (3) Juvenile Dependency, which refers to children who have been abused, neglected, or abandoned (*See* CAL. WELF. & INST. CODE § 300 (Deering Supp. 2001)). The latter is commonly referred to as the foster care or child welfare system.

2. *See* JANA KAY SLATER & CAROL T. SMITH, CALIFORNIA DEPARTMENT OF EDUCATION, MEETING THE EDUCATIONAL NEEDS OF FOSTER CHILDREN IN CALIFORNIA: STRATEGIES FOR IMPROVING ACADEMIC SUCCESS 5, 9-10 (1993) (citations omitted); JILL DUERR BERRICK ET AL., CALIFORNIA DEPARTMENT OF EDUCATION, EDUCATION OF FOSTER GROUP HOME CHILDREN: WHOSE RESPONSIBILITY IS IT? 1-1 (2001); Robert H. Ayasse, *Addressing the Needs of Foster Children: The Foster Youth Services Program*, 17 SOC. WORK EDUC. 207, 207-09 (1995); Peter E. Leone & Sheri Meisel, *Improving Educational Services for Students in Detention and Confinement Facilities*, 17 CHILDREN'S LEGAL RTS. J. 2, 2 (1997); Jill Duerr Berrick et al., *A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation*, 16 CHILDREN & YOUTH SERVICES REV. 33, 37 (1994).

educational services they need. This problem is particularly acute for children and youth in out-of-home placement.³ Without intervention, most of these young people will graduate – not from high school – but on to the public assistance and criminal justice systems.⁴ Given that the annual per capita cost of incarcerating a ward in the California Youth Authority is now \$37,000,⁵ the price of ignoring these young people's educational needs is both morally and fiscally untenable.

How can we reverse this trend? First, we must acknowledge the urgency of the problem in the lives of these children. Second, we must take advantage of the innovative programs and judicial remedies available to address this situation. Even then, these children need more. Fundamentally, these children need someone who will advocate for their educational rights and needs. This article will highlight the nature of this educational crisis and will discuss methods available to tackle this issue where children's educational rights can be most effectively enforced – in juvenile court.

I. The Crisis in California's Juvenile Court System

A. Foster Children

The plight of children in the dependency system is sobering. In addition to dealing with the physical and emotional trauma from parental abuse or neglect, these children must also struggle with numerous changes in their placement and their schools. In California alone, where there are over 100,000 children in foster care,⁶ these children attend an average of 9 different schools by the age of 18.⁷ It is little wonder that dependent children demonstrate significantly lower achievement and lower performance in school.⁸ The issues they

3. See Ayasse, *supra* note 2, at 208; Leone & Meisel, *supra* note 2, at 2, 5-7; Berrick et al., *supra* note 2, at 58-59. See generally SLATER & SMITH, *supra* note 2.

4. See Ayasse, *supra* note 2, at 209-210 (citations omitted); SLATER & SMITH, *supra* note 2, at 5-7. See generally Richard P. Barth, *On Their Own: The Experiences of Youth After Foster Care*, 7 CHILD & ADOLESCENT SOC. WORK J. 419 (1990).

5. See California Youth Authority, *Ward Per Capita Cost* (visited Jan. 4, 2001) <<http://www.cya.ca.gov/facts/wardcost.html>>.

6. See Barbara Needell et al., *1988-2000 July 1 Caseload Children < 19 in Foster Care by Placement Type: California* (visited Jan. 4, 2001) <<http://cssr.berkeley.edu/alan/cwscms/fac8800b.html>> (The Child Welfare Research Center also documents placement for children in foster care).

7. See SLATER & SMITH, *supra* note 2, at 8.

8. See EDUCATIONAL OPTIONS OFFICE, CALIFORNIA DEPARTMENT OF EDUCATION, REPORT TO THE GOVERNOR AND LEGISLATURE: FOSTER YOUTH SERVICES PROGRAMS, at 2-3 (2000) [hereinafter FOSTER YOUTH SERVICES] (citations

face at school range from the difficulties of making new friends and meeting new teachers to grappling with delays in enrollment, as well as difficulties with the transfer of their records and lost academic credits when dependent children are moved mid-semester.⁹ Compounding these problems, they are nearly powerless to navigate through the various education, child welfare, mental health, and probation systems whose responsibility it is to implement the services they may need.

Foster children receive special education services at higher rates than the general population, yet frequently there are delays in the delivery of their special education services.¹⁰ While studies show that many of these youngsters are not receiving services for their learning disabilities, other statistics reveal that too often foster children are over-identified and labeled as "special education" or "problem kids."¹¹ The simple truth is that children who are moved from placement to placement and from school to school fall behind and suffer academically. The statistics are telling: as many as 75% of foster youth perform below grade level; 50-80% have been retained at least one year in school; and more than 50% of foster children do not graduate from high school.¹²

B. Juvenile Court Delinquents

The statistics for youth in the juvenile delinquency system are no less troubling. Studies show that whereas approximately 7% of all public school students in the United States have been identified as having disabilities such as mental retardation, emotional distress, or learning disabilities, the figures are staggeringly higher for children in the juvenile justice system.¹³ 35% of children with learning disabilities

omitted); SLATER & SMITH, *supra* note 2, at 6-7; Barth, *supra* note 4, at 420.

9. See generally FOSTER YOUTH SERVICES, *supra* note 8; SLATER & SMITH, *supra* note 2.

10. See Sandra J. Altschuler, *A Reveille for School Social Workers: Children in Foster Care Need Our Help*, 19 SOC. WORK EDUC. 121, 122, 124 (1997); Ayasse, *supra* note 2, at 208.

11. See Cynthia Godsoe, *Caught Between Two Systems: How Exceptional Children in Out-of-Home Care Are Denied Equality in Education*, 23-24 (2000) (unpublished manuscript, on file with the *Yale Law Journal*) (citations omitted). See generally CARNEGIE TASK FORCE ON LEARNING IN THE PRIMARY GRADES, CARNEGIE CORPORATION OF NEW YORK, *YEARS OF PROMISE: A COMPREHENSIVE LEARNING STRATEGY FOR AMERICA'S CHILDREN*, at 13 (1996) (citation omitted).

12. See FOSTER YOUTH SERVICES, *supra* note 8, at 2-4; SLATER & SMITH, *supra* note 2, at 6.

13. See Peter E. Leone et al., *Understanding the Overrepresentation of Youths with*

drop out of school and many of these same youngsters end up in the criminal justice system.¹⁴ Among incarcerated youth, as many as 50% have undetected learning disabilities and up to 70% may qualify for special education programs.¹⁵

Compounding this problem is the reality that characteristics common to children with learning disabilities such as difficulty in listening, thinking, and speaking often lead to misinterpretation of a child's behavior. As a result, a disabled minor's poor presentation in court or during interrogation may be interpreted as dangerous, resulting in detention¹⁶ (or as retired Santa Clara County Judge Read Ambler puts it: "Can't Read? Go to Jail!").¹⁷

Whether the issue is truancy, suspensions, or undetected learning disabilities, nearly all the youth in detention facilities have serious school problems.¹⁸ Most of these young people will not graduate from high school and, without intervention, they have few prospects for making it in this high-tech information-driven economy.

Yet, when given the opportunity, many of these same youth are remarkably responsive. For example, young people detained in San Francisco's Juvenile Hall have shown tremendous enthusiasm for the new library project there.¹⁹ They have requested books about poetry, mythology, art, history, science, Shakespeare, and even Harry

Disabilities in Juvenile Detention, 3 D.C. L. REV. 389, 389 (1995) (as many as 70% of incarcerated youth suffer from disabling conditions); T. Rowand Robinson & Mary Jane K. Rapport, *Providing Special Education in the Juvenile Justice System*, 20 REMEDIAL & SPECIAL EDUC. 19, 19-20 (1999) (citations omitted).

14. See *Evidence of Failure for Persons with Learning Disabilities*, LDA NEWSBRIEFS, Jan.-Feb. 1996, at 21 (citing REPORT OF THE SUMMIT ON LEARNING DISABILITIES, 1994) (citation omitted).

15. See generally Leone et al., *supra* note 13; Robinson & Rapport, *supra* note 13.

16. See Leone et al., *supra* note 13, at 391-92. See generally THE UNIVERSITY OF THE DISTRICT OF COLUMBIA SCHOOL OF LAW JUVENILE LAW CLINIC, SPECIAL EDUCATION ADVOCACY UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) FOR CHILDREN IN THE JUVENILE DELINQUENCY SYSTEM (Joseph B. Tulman & Joyce A. McGee eds., 1998).

17. Judge Read Ambler, *Early Help Can Save Learning Disabled Kids* (visited Jan. 4, 2001) <www.idaca.org/gram/ambler.htm> (SAN JOSE MERCURY NEWS, Sep. 1998) [hereinafter *Early Help*] (Judge Ambler is a pioneer in the area of the unmet educational needs of children in the juvenile court system and is a frequent lecturer on this topic). See also Leone et al., *supra* note 13, at 390, 400.

18. See DELANCEY ST. FOUND., MAYOR'S CRIMINAL JUSTICE COUNCIL & CALIFORNIA BOARD OF CORRECTIONS, SAN FRANCISCO JUVENILE JUSTICE COMPREHENSIVE ACTION PLAN, at 13 (Mar. 14, 1997) (showed that 90% of the youths in custody in San Francisco juvenile detention facilities have serious school problems).

19. Observations based on author's work at San Francisco's Juvenile Hall.

Potter!²⁰ The point is that so many of these youth, whether they are categorized as “special ed,” “mental health,” or drug dependent, want to learn. The professionals working with them need to do more to make it possible for them to do so.

II. Statutory and Constitutional Framework to Address the Crisis

Child advocates could tackle this crisis by relying on a number of legal avenues. First, they could rely on federal and state statutes addressing special education, namely the Individuals with Disabilities Education Act (IDEA). Second, for education needs, other than “special education” needs, they could look to the federal and state constitutions for relief. Even though the United States Supreme Court has held that education is not a fundamental right,²¹ child advocates may still articulate a cause of action under the equal protection guarantees of the federal Constitution.²² By contrast, the California Supreme Court has held that education is a fundamental right.²³ As a result, advocates may challenge the conditions in the juvenile court system as violative of both the children’s fundamental right to an education and the state guarantees of equal protection of the laws.²⁴ The third and most effective means to deal with this crisis is at the juvenile trial court level. This method of working with the juvenile courts encourages a collaboration of all who are involved in the child’s life.

A. Special Education Rights Under Federal and State Statutory Law

The law governing special education²⁵ is statutory in nature.²⁶

20. *See supra* text accompanying note 19.

21. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 37 (1973).

22. Section 1 of the Fourteenth Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

23. *See, e.g.,* Butt v. State of California, 4 Cal. 4th 668, 680 (1992); Serrano v. Priest, 18 Cal. 3d 728, 748-50 (1976); Serrano v. Priest, 5 Cal. 3d 584, 589 (1971).

24. *See* CAL. CONST. art. I, § 7(a) (“A person may not be . . . denied equal protection of the laws . . .”); CAL. CONST. art. IV, § 16(a) (“All laws of a general nature have uniform operation.”).

25. This article highlights the governing special education laws. For a more

The basic source of legal obligation to provide special education services to eligible children is set forth in IDEA.²⁷ IDEA mandates that states receiving federal support for education of students with disabilities ensure that all eligible students receive a “free appropriate public education” or FAPE.²⁸ FAPE means special education and related services specially designed, at no cost to parents, to meet the unique needs of a child with a disability.²⁹ This landmark legislation granted parents of children with disabilities, and those suspected of having disabilities, procedural and substantive rights concerning the assessment, identification, and education of their children.³⁰ IDEA provides that education services are an entitlement for all eligible children, including those in the juvenile justice system.³¹ It also provides mechanisms to appeal the decisions of school districts³² and

comprehensive analysis of the laws pertaining to special education, see generally California Department of Education, *A Composite of Laws* (visited Jan. 4, 2001) <<http://www.cde.ca.gov/spbranch/sed/index.htm>>; Sue Burrell & Loren Warboys, *Special Education and the Juvenile Justice System*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, U.S. DEP’T OF JUST., Bull. No. NCJ 179359 (July 2000); LOREN WARBOYS ET AL., CALIFORNIA JUVENILE COURT SPECIAL EDUCATION MANUAL (1994); COMMUNITY ALLIANCE FOR SPECIAL EDUCATION (CASE) AND PROTECTION AND ADVOCACY, INC. (PAI), SPECIAL EDUCATION: RIGHTS AND RESPONSIBILITIES (8th ed. 2000) [hereinafter CASE].

26. There are three federal statutes that provide protections to children with disabilities: Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (1994); Vocational Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794 (1994); and the Americans with Disabilities Education Act tit. 2, 42 U.S.C. § 12101 et seq. (1994). These statutes and the accompanying regulations specify categories of disabilities covered under the law. See 20 U.S.C. § 1401(3) (1994). In order to receive special education and related services, a child must be found to have a specified disability. See 20 U.S.C. § 1412(1), (15) (1994); 34 C.F.R. § 300.7 (2000); CAL. EDUC. CODE § 56026 (Deering Supp. 2001).

27. See 20 U.S.C. § 1400 et seq.; CAL. EDUC. CODE § 56004 (Deering Supp. 2001). In addition to the IDEA, Section 504 of the Vocational Rehabilitation Act and Title II of the Americans with Disabilities Education Act require that schools make their programs accessible to disabled students and prohibit discrimination against persons with disabilities. See 29 U.S.C. § 794; 42 U.S.C. § 12101 et seq.

28. 20 U.S.C. § 1412(a)(1).

29. See 20 U.S.C. § 1400; CAL. EDUC. CODE § 56000 (Deering Supp. 2001).

30. Special education rights are largely vested with a parent. When the parent is not available, the Juvenile Court must appoint a “surrogate parent” to represent the child’s interests. See 34 C.F.R. § 300.514 (2000); CAL. EDUC. CODE § 56028 (Deering Supp. 2001). For a discussion regarding surrogate parents, see WARBOYS ET AL., *supra* note 25, at 136-48.

31. The IDEA applies to “all such programs administered by any other state or local agency.” 20 U.S.C. § 1412 (a)(11)(a). The corresponding regulations are clear that this includes correctional facilities. See 34 C.F.R. § 300.2(b)(1)(IV) (2000); *Alexander v. Boyd*, 876 F. Supp. 773, 800 (D.S.C. 1995).

32. See 20 U.S.C. § 1415(g) (1994).

opportunities to seek redress in court.³³

The federal statutes and the accompanying regulations enumerating the full range of due process and substantive rights under IDEA are extensive. In the context of children in the juvenile court system, it is important to note that the educational rights set forth in IDEA are conferred to parents, to be exercised on behalf of their child. Unfortunately, this statutory framework is a challenge for many parents to comprehend. When parents are unavailable to advocate for their child, as is frequently the case in juvenile court, particularly in the dependency cases, it is often difficult to find an appropriate educational surrogate within the statutory timelines.³⁴ Given the complexities of this area of law, it has become increasingly clear that children in the juvenile system who are eligible for special education services need skilled and consistent advocates to ensure they receive the services to which they are entitled.

In *Board of Education v. Rowley*,³⁵ the United States Supreme Court interpreted the meaning of FAPE under IDEA. The issue in *Rowley* was whether a deaf student who was mainstreamed in regular classes required instruction by a qualified sign-language interpreter in all of her academic classes to comply with IDEA.³⁶ The Court set forth a two-pronged test to determine whether a school's FAPE complies with IDEA. The first prong determines whether the State has complied with the procedures set forth in IDEA.³⁷ The second prong determines whether the individualized educational program developed through IDEA procedures is reasonably calculated to enable the child to receive educational benefits.³⁸

Using that test, the Court ruled that the school district had complied with IDEA.³⁹ The Court held that the state complied with IDEA procedures because the 8 year old deaf student was receiving personalized instruction and services sufficient to confer an "educational benefit" upon the child—without the use of a sign

33. *See id.* § 1415(i).

34. *See* 34 C.F.R. § 300.514; CAL. EDUC. CODE §§ 56028, 56050 (1994); CAL. GOV'T CODE § 7579.5 (Supp. 2001). For a full discussion of surrogate parents, see generally WARBOYS ET AL., *supra* note 25; CASE, *supra* note 25.

35. *Board of Education v. Rowley*, 458 U.S. 176 (1982).

36. *See id.* at 184.

37. *See id.* at 206.

38. *See id.* at 206-207.

39. *See id.* at 209-210.

language interpreter.⁴⁰ The Court found that FAPE does not require the state to maximize the potential of each child or provide the best possible education program.⁴¹ In so holding, the Court noted that the deaf child in *Rowley* was performing above average in the regular classrooms of a public school system and was “advancing easily from grade to grade” albeit not up to her fullest capability.⁴²

The Court’s ruling in *Rowley* is critical for the many children in the juvenile court system who suffer from disabilities. These children, for the most part, fall well short of the plaintiff’s achievements in *Rowley* (see *supra* Sections IA & B) and are *not* advancing easily from grade to grade, or even performing at grade level in the classroom. In *Rowley*, the Court observed: “[w]e do not hold today that every handicapped child who is advancing from grade to grade in a regular public school is automatically receiving a ‘free appropriate public education’.”⁴³ Indeed, the procedures set forth in IDEA, such as the requirement that school districts actively seek those children who need special education,⁴⁴ that there be timely referrals for Individual Education Programs (IEP’s), and timely appointment of surrogate parents where parents are unavailable to advocate for their child’s educational rights, are often not met for children in the juvenile court system.⁴⁵ The second prong enunciated by *Rowley* and enumerated in IDEA is also not met for many children in the juvenile court system. Too often, these children do not have an educational program which is “reasonably calculated to enable a child to receive educational benefits.”⁴⁶ Thus, both IDEA and *Rowley* provide a basis to challenge the state’s failure to provide disabled children with their rightful education.⁴⁷

40. *Id.* at 200.

41. *See id.* at 198.

42. *Id.* at 210.

43. *Id.* at 203, n.25.

44. These statutes, known as “child find” statutes, are found in Cal. Educ. Code § 56300 (Deering Supp. 2001) and 20 U.S.C. § 1412.

45. Based on observations of the author and personal communications with school district and court personnel. *See generally* Leone & Meisel, *supra* note 2; Margaret Beyer et al., *Treating the Educational Problems of Delinquent & Neglected Children*, CHILDREN’S LEGAL RIGHTS J., at 2 (Spring 1988). Additionally, the timelines under the IDEA are not in sync with the short statutory mandates governing juvenile court hearings. Thus, the time frame for an IEP, which may be necessary for a minor’s placement, is likely to exceed the statutory date for the minor’s disposition.

46. *Rowley*, 458 U.S. at 203, n.25.

47. This is often not done due to the time and cost of litigation and due to the fact that the children, especially those in the dependency system, may not have a parent or

Each state has its own laws reflecting the obligations set forth in IDEA. In California, the governing statutes are found in sections 56000-56885 of the Education Code.⁴⁸ Section 56031 provides for “special education” at:

no cost to the parent, to meet the unique needs of individuals with exceptional needs, whose educational needs cannot be met with modification of the regular instruction program, and related services, at no cost to the parent, which may be needed to assist such individuals to benefit from specially designed instruction.⁴⁹

To trigger IDEA (or the companion California special education statutes), there must be a written request for assessment.⁵⁰ Once this is done, the child is under IDEA and a series of procedures and timelines is to be activated.⁵¹ If a parent or guardian is not available to advocate for the child, the juvenile court has a duty to make an order limiting the educational rights of a parent and the school district must then appoint a surrogate parent to be responsible for the educational needs of a child.⁵²

B. Educational Rights Under Federal and State Constitutions

As previously noted, education is not a fundamental right under the federal Constitution. In 1973, the United States Supreme Court in *San Antonio Independent School District v. Rodriguez*⁵³ held that, although education is one of the most important services provided by the state, it is not a fundamental right because education is neither an explicit nor an implicit right under the federal Constitution.⁵⁴ Thus, the Supreme Court virtually abdicated any role for federal courts in guaranteeing education rights under the federal Constitution.⁵⁵

guardian to advocate for their educational rights.

48. For a thorough discussion of the Federal and State mandates, see generally WARBOYS ET AL., *supra* note 25.

49. CAL. EDUC. CODE § 56031 (Deering Supp. 2001).

50. *See id.* § 56321. Note that the California statutes closely follow the IDEA, with some differences in terminology. For example, the California code refers to these children as “individuals with exceptional needs” and the federal laws refer to children with a “disability.”

51. *See id.* §§ 56029, 56320 et seq.

52. *See* 34 C.F.R. § 300.514; CAL. EDUC. CODE § 56028 (Deering Supp. 2001); CAL. GOV'T. CODE § 7579.5(a) (Deering Supp. 2001). For a full discussion of surrogate parents, see generally WARBOYS ET AL., *supra* note 25; CASE, *supra* note 25.

53. *See* 411 U.S. 1 (1973).

54. *See id.*

55. *See generally* Robert J. Jensen, *Advancing Education Through Education Clauses*

Notwithstanding its holding in *Rodriguez*, the Supreme Court has not foreclosed the possibility of challenging deficient education services for children under the Equal Protection Clause of the federal Constitution.⁵⁶ In *Plyler v. Doe*,⁵⁷ the Court held that a Texas state statute that denied public education to the children of illegal immigrants violated the Equal Protection Clause. In so holding, the Court observed that although education is not a fundamental right, “neither is it merely some governmental ‘benefit’ indistinguishable from other forms of social welfare legislation. Both the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child, mark the distinction.”⁵⁸ Indeed, the Court noted: “[w]e are reluctant to impute to Congress the intention to withhold from these [immigrant] children, for so long as they are present in this country through no fault of their own, access to a basic education.”⁵⁹ The Court went on to say that:

education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.⁶⁰

Children in foster care could articulate a cause of action under the Equal Protection Clause using *Plyler*. Like the children in *Plyler*, the status of children in foster care is determined through no fault of their own; rather, their status is determined by the conduct of their parents or guardians (abuse or neglect in the case of dependents). Like the children in *Plyler*, these children are “innocent victims”⁶¹ and should not be denied basic educational rights. Thus, under the analysis of the court in *Plyler*, a child advocate could argue that a child sitting in a foster or group home without the necessary paper work to be enrolled in school or the educational records necessary to

of State Constitutions, BYU EDUC. & LAW J. 1, 10 (1997); Allen W. Hubsch, *The Emerging Right to Education Under State Constitutional Law*, 65 TEMP. L. REV. 1325 (1992).

56. U.S. CONST. amend. XIV, § 1.

57. *Plyler v. Doe*, 457 U.S. 202, 221 (1982).

58. *Id.* at 221.

59. *Id.* at 226.

60. *Id.* at 221.

61. *Id.* at 224.

obtain school credits is *not* receiving equal access to education under the Equal Protection Clause.

Although the case is certainly more difficult for delinquent youngsters, they too should be able to rely on *Plyler* when they are deprived of educational benefits. The court in *Plyler* noted the impropriety of a denial of education for some isolated group of children stating:

Illiteracy is an enduring disability. The inability to read and write will handicap the individual deprived of a basic education each and every day of his life. The inestimable toll of that deprivation on the social, economic, intellectual, and psychological well-being of the individual, and the obstacle it poses to individual achievement, make it most difficult to reconcile the cost or the principle of a status-based denial of basic education within the framework of equality embodied in the Equal Protection Clause.⁶²

Citing the landmark *Brown v. Board of Education*, the Court added:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.⁶³

The state has undertaken to educate both delinquent and dependent children. Thus, when a child in the juvenile justice system is deprived of educational services,⁶⁴ *Plyler* provides a rationale that such discrimination violates the Equal Protection Clause.⁶⁵

Given the United States Supreme Court holding in *Rodriguez*, state courts present an alternative venue for advocating for the educational rights of children. All state constitutions contain an education clause designed to establish some form of educational

62. *Id.* at 222.

63. *Id.* at 223 (quoting *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)).

64. Delinquent children often do not receive credits sufficient for transfer into "regular" high school when they are released from a correctional facility; they often do not have access to classes necessary to obtain a GED, often they do not have supplies and books necessary in their classes. Observations of author and conversations with school district and court personnel: *See generally* JUVENILE JUSTICE COMMISSION OF SUPERIOR COURT, CITY AND COUNTY OF SAN FRANCISCO, INSPECTION REPORT, at 14 (1999) [hereinafter INSPECTION REPORT].

65. The *Plyler* court added that "[p]aradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. But more directly, 'education prepares individuals to be self-reliant and self-sufficient participants in society.'" 457 U.S. at 222 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 221(1972)).

system.⁶⁶ At least 20 states, including California, have case law interpreting their education clauses to confer a fundamental right status to education.⁶⁷

In a line of school financing cases, the California Supreme Court has held that education is a fundamental right guaranteed by the California Constitution and that state action allegedly in violation of this right is subject to strict scrutiny.⁶⁸ The California Constitution recognizes that “[a] general diffusion of knowledge and intelligence [is] . . . essential to the preservation of the rights and liberties of the people”⁶⁹ Additionally, in *Butt v. State of California*, the California Supreme Court observed that public education is a “uniquely fundamental personal interest,”⁷⁰ and “is an obligation which the State assumed by the adoption of the Constitution In view of the importance of education to society and to the individual[,] the schooling furnished by the state must be made available to all on an equal basis”⁷¹

Efforts have been made to extend the rationale of these cases beyond school financing situations. In May 2000, a statewide class action suit was filed on behalf of California public school children, alleging under the California Constitution, that these children’s equal protection rights have been violated since public schools have not provided the basic educational necessities given to other public school students in the state.⁷² The complaint specifically relies on *Butt* and *Serrano* as authorities for the proposition that the right to equal education is fundamental in California and that all students must be given equal access to basic educational necessities.⁷³ While this litigation does not address the specific needs of children in the juvenile court system, it could have a significant impact on these children’s educational rights since many of the deprivations alleged in that action apply to children in the juvenile court system as well.⁷⁴

66. See Jensen, *supra* note 55, at 3.

67. See Hubsch, *supra* note 55, at 1325-26.

68. See Priest, 18 Cal. 3d at 761; Priest, 5 Cal. 3d at 604-10.

69. CAL. CONST. art. IX, § 1.

70. Butt, 4 Cal. 4th at 683.

71. *Id.* at 680.

72. See *Complaint for Injunctive and Declaratory Relief, Williams v. California, Superior Court of City and County of San Francisco* (visited Jan. 4, 2001) <<http://www.aclunc.org/students/ca-school-complaint.html>> [hereinafter *Complaint for Injunctive and Declaratory Relief*].

73. See *id.* at ¶ 112.

74. Among the substandard learning conditions alleged in this California litigation

Thus, child advocates could use this line of cases to argue for equal educational services—beyond those pertaining to special education—for children in the juvenile court system. For example, a youth in a detention facility may be unable to get a Graduate Efficiency Degree [GED], the academic credits necessary to maintain grade level or sufficient academic credits to reenter high school upon release from the correctional institution. That same child could wait for days, indeed weeks, upon release to be enrolled in an appropriate school. Similarly, a foster child may not get enrolled in the school closest to her new placement for weeks. That same child may lack the records or verification of school credits necessary to complete high school or to enroll in college. If a child in a group home is lucky enough to have tutoring or other services to stay on track academically, that same young person is unlikely to have similar services in her next placement. All too often the possibility of college is not even explored. The California Constitution places responsibility on the state for providing equal education to all the state's children. These children are supervised by state institutions (probation, child welfare, mental health and education) and are reliant upon these systems to ensure their educational needs are met.

A state's constitution thus provides a potential vehicle to challenge such deficiencies in educational services.⁷⁵ While the case law to date has addressed the fundamental right to education essentially in the context of school financing matters,⁷⁶ the equal protection rationale should certainly apply to the disparate treatment suffered by children in the juvenile court system. Indeed, given the fact that children in California have a fundamental right to educational equality, children who are in the care of the state (dependents and delinquents alike) are entitled to have their basic educational needs met. It is a violation of the state equal protection guarantees to deny these children timely access to school, their records, and appropriate educational classes and services they need to

are: lack of textbooks and supplies; reliance on illegible or incomplete photocopies; outdated texts; underprepared and inexperienced teachers; overcrowded, unsafe and poorly maintained physical school site structures. *See id.* at ¶ 42. Significantly, these conditions are often cited as deficits in the juvenile justice system as well. *See INSPECTION REPORT, supra* note 64, at 14.

75. *See Jensen, supra* note 55, at 10; Hubsch, *supra* note 55, at 1325-6.

76. *Butt* is not strictly a school financing case in that the court was asked to decide whether the state has a constitutional duty, aside from the equal allocation of educational funds, to prevent budgetary problems of a particular school district from depriving students of "basic" education equality. *See Butt*, 4 Cal. 4th at 674. The court found that the State does have such a duty. *See id.* at 703-4.

stay on track.

III. The Juvenile Courts' Response to the Educational Crisis

Given the profound educational needs of children in both the foster care and the delinquency systems, it is no surprise that the juvenile courthouse is where the unmet needs of these children collide with the very systems responsible for them. These systems include child welfare, juvenile probation, education, and mental health. Since litigation under IDEA is often lengthy and costly and state actions to date have essentially been in the area of school financing issues,⁷⁷ an alternative and increasingly innovative way to address these issues is at the juvenile trial court level.

The juvenile court is ultimately responsible for children within its jurisdiction.⁷⁸ Increasingly, juvenile court judges are taking that responsibility more seriously and are holding schools, welfare agencies, and probation departments accountable for these children's educational needs. Where further legislation and enforcement mechanisms are needed, the trial court judges are emerging as the ones with the authority, respect, and ability to effectuate change and make a difference in these children's lives.⁷⁹

77. On May 17, 2000, the ACLU and others filed suit in California state court under the education clause of the California constitution challenging the lack of educational services provided students in poorer school districts. This litigation relies on the California Constitution for the first time to challenge discrimination in basic educational services. See *Complaint for Injunctive and Declarative Relief*, *supra* note 72, at ¶14.

78. See CAL. WELF. & INST. CODE § 202 (Deering Supp. 2001). California law mandates:

Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, guidance, and *education, including special education and related services if the child has exceptional needs . . .* or the right to receive accommodations if the child has disabilities . . . consistent with their best interest and the best interest of the public.

Id. § 202(b) (emphasis added). Also, when a child is declared a dependent or a ward (delinquent) of the court, the juvenile court can make "any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor . . ." *Id.* §727(a) (delinquents). See also § 362(a) (dependents).

79. In California, judges have the authority to join in a juvenile court proceeding any agency, such as the school district, that has failed to meet its legal obligation to serve a delinquent or dependent child. See *id.* §§ 727(a) (for delinquents), 362(a) (for dependents). Additionally, for the distressingly high numbers of children who are on the trajectory of "advancing" from the child welfare system to the juvenile delinquency system, the court can and indeed must require the probation department and the child welfare department to meet, assess the minor's needs, and recommend to the court the best plan—including an educational assessment—for a minor. See *id.* § 241.1(a)-(b); *In re Marcus G.*, 73 Cal. App. 4th 1008, 1012-13, 1017 (1999).

The juvenile courts have endorsed legislative remedies. In 1999, the Juvenile Court Judges of California's number one legislative priority was a bill to ameliorate special education services for children supervised by the juvenile court.⁸⁰ Again in 2000, the Juvenile Court Judges backed legislation addressing the special education needs of children in the juvenile court.⁸¹

There has also been significant leadership from the juvenile court bench to encourage collaborative efforts to improve educational services for these children. In Santa Clara County, the juvenile court has taken the lead in developing Project YEA! (Youth Education Advocates) and the Educational Rights Project to advocate for the timely implementation of dependent and delinquent minors' special education services and placement.⁸² Led by the juvenile court, Santa Clara has also established a Special Committee for the Education of Children of the Juvenile Court to address the educational needs of children in the juvenile justice system.⁸³

On a statewide level, one of the most successful collaborations is the Foster Youth Services Program (FYSP).⁸⁴ This program started as a pilot program in four counties in 1973 and is now in thirty-eight counties statewide.⁸⁵ FYSP is an education-based program that links school districts with child welfare and probation departments to provide educational services such as tutoring, advocacy, assistance

80. See *Child Welfare Services: Special Education: Hearing on A.B. 645 Before the Assembly Comm. on Human Services*, 1999-2000 Reg. Sess. (Cal. Apr. 21, 1999) (bill analysis); *Child Welfare Services: Special Education and Accommodations for Children with Disabilities: Hearing on A.B. 2375 Before the Assembly Comm. on Human Services*, 1999-2000 Reg. Sess. (Cal. Apr. 12, 2000) (bill analysis) [hereinafter, *Hearing on A.B. 2375*]. A.B. 645 and A.B. 2375 ultimately were not passed into law. See Gray Davis, *A.B. Veto Ltr., A.B. 645* (Cal. Oct. 10, 1999); Gray Davis, *A.B. Veto Ltr., A.B. 2375* (Cal. Sep. 30, 2000).

81. See *Hearing on A.B. 2375*, *supra* note 80 (requires those in the court system to take specified actions to ensure that children with special education needs receive the services they need); *Education: Hearing on A.B. 2392 Before the Assembly Comm. on Educ.*, 1999-2000 Reg. Sess. (Cal. May 3, 2000) (bill analysis) (pertains to the issue of surrogate parents). A.B. 2392 ultimately was not passed into law. See Gray Davis, *A.B. Veto Ltr., A.B. 2392* (Cal. Sep. 22, 2000).

82. See Parents Helping Parents, *Project YEA! Youth Educational Advocates: Volunteers for Children in the Court in Santa Clara County* (visited Jan. 4, 2001) <<http://www.php.com/ProjectYea.htm>>.

83. See generally *Early Help*, *supra* note 17.

84. See CAL. EDUC. CODE §§ 42920-42925 (Deering Supp. 2001).

85. See Cal. Dept. of Educ., *Foster Youth Services Program* (visited Jan. 4, 2001) <<http://www.cde.ca.gov/spbranch/essdiv/fysp-index.html>>.

with records, and other services for children in foster care.⁸⁶ FYSP has a documented success rate of decreasing truancy and improving academic outcomes for foster children.⁸⁷ In 1999, the program was expanded statewide, but only for children in group homes.⁸⁸ As a result of the project's success rate, there have been legislative efforts to expand FYSP statewide for all children in foster care.⁸⁹

Increasingly, the FYSP programs are recognizing the importance of partnering with their local juvenile courts. In San Francisco, for example, the juvenile court played a critical role in the development of the San Francisco FYSP.⁹⁰ In other counties, such as Riverside and Nevada, courts have worked closely with the FYSP to develop orders to facilitate the exchange of information between the agencies working with children.⁹¹

The Judicial Council of California's Center for Children and the Court—the administrative offices of the courts—recently launched an Educational Advocacy Project in Alameda County with the goal of ensuring that the educational needs of dependents of the Alameda Juvenile Court are met through direct advocacy on their behalf. This project has the direct involvement of the juvenile court bench.

Juvenile court judges also have the authority to assign advocates to ensure that children obtain the services to which they are entitled. The Court Appointed Special Advocates (CASA) program provides non-lawyer advocates, appointed by the court, to assist individual children in dependency cases.⁹² Many of these advocates spend considerable time addressing their assigned child's educational situation. Given that a child in the juvenile court system may have multiple caseworkers or probation officers over the years, a dedicated CASA can provide the continuity and advocacy necessary to advance a child's educational needs. Certain counties, such as San Bernardino, Contra Costa, and Marin are even expanding CASA to

86. See generally FOSTER YOUTH SERVICES, *supra* note 8.

87. See *id.* at 1.

88. See *id.* at 6.

89. See A.B. 2012, 1999-2000 Reg. Sess. (Cal. 2000). A.B. 2012 was ultimately not signed into law; however, in his veto message, the Governor acknowledged the importance of the program and stated: "expansion of this meritorious program should be considered . . . in the 2001-02 budget." Gray Davis, *A.B. Veto Ltr., A.B. 2012* (Cal. Sep. 22, 2000). This same bill has been introduced as A.B. 797 on February 22, 2001. See *id.*

90. Based on personal observation as Chair of San Francisco FYSP Steering Committee.

91. See generally FOSTER YOUTH SERVICES, *supra* note 8.

92. See CAL. WELF. & INST. CODE §§ 100-09 (Deering Supp. 2001).

assist in certain delinquency cases.

In San Francisco, the juvenile court now requires minors' attorneys to have some basic training in special education.⁹³ The court is exploring the development of a panel of attorneys specifically trained in special education to represent minors and advocate for their educational rights. These efforts mark an important recognition that children in the juvenile court system need skilled and consistent advocates to obtain the educational services to which they are entitled.

Conclusion

The statistics concerning the educational needs of children in the juvenile court system are real and dire. The laws designed to protect these children are underutilized. Hopefully, this article will encourage those working with dependent and delinquent children, as well as others in the legal community, to address and ameliorate these children's educational plight.

93. *See id.* § 317 (Deering Supp. 2001). The Judicial Council of California took a leadership role in advocating for the passage of S.B. 2160, which will go into effect in 2001, and which amends Welf. & Inst. Code Section 317 to require that counsel be appointed for all minors in dependency cases, unless the court believes it would not benefit the child. Section 317 has always required that minor's counsel "investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings." *Id.* This new law should add further strength to the position that minor's counsel should advocate for the minor's educational needs in dependency cases. *See* S.B. 2160, 1999-2000 Reg. Sess. (Cal. 2000); *Dependent Children: Appointment of Counsel: Hearing on S.B. 2160 Before the Senate Judiciary Comm.*, 1999-2000 Reg. Sess. (Cal. Apr. 11, 2000) (bill analysis).

