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The Road to Resolution

In December 2009 HUD's newly appointed assistant secretary of community planning and development, Mercedes Marquez, invited plaintiffs' and Barbour's representatives to Washington for an all-hands meeting—the first of its kind among these parties. At the April 16, 2010, meeting the parties resolved that, with HUD's expertise and advice, they would develop agreed-upon estimates of the unmet housing needs to guide them to a potential resolution. While the diversion of funds to the port project was the focus of the plaintiffs' lawsuit, the plaintiffs' advocates' primary goal always had been to get the plaintiffs and the thousands like them the assistance they still needed, whether that money came directly from the port funds or elsewhere.

During the summer of 2010 all parties set to work. The state analyzed the case files of prior program applicants who had been turned away because they were deemed ineligible. The plaintiffs' lawyers developed maps to show the geographic patterns of the unmet needs; such needs were clustered north of the railroad in overwhelmingly African American and poor communities, where flood damage was minimal but wind damage was widespread. HUD's experts, using data from the state, generated their own global estimates of the remaining need and underlying demographics.

In July the Mississippi Center for Justice reported that the bulk of the remaining housing need was in low-income African American communities north of the railroad tracks and called for aid to approximately 5,000 still unassisted households (Mississippi Center for Justice, Hurricane Katrina: How Will Mississippi Turn the Corner? (July 2010), http://bit.ly/bFGpaw). National Public Radio and the *Washington Post* covered the center's report (Debbie Elliott, *A Hard Fight for a Political Voice in Biloxi, Mississippi* (National Public Radio Aug. 23, 2010), http://n.pr/9hwLjd; Michael A. Fletcher, *Uneven Katrina Recovery Efforts Often Offered the Most Help to the Most Affluent*, Washington Post, Aug. 27, 2010, http://wapo.st/duJ0X6).

In light of the growing pressure, HUD officials' continuing close attention, and the impending oral argument on plaintiffs' appeal, Barbour agreed in the fall to what would become the Neighborhood Home Program. The state dropped its exclusion of those with wind damage and those without insurance, set aside $93 million for housing assistance to 4,400 households that the parties had identified as having been denied assistance, agreed to conduct an expansive outreach program to find more needy households, and agreed to reserve an additional $40 million for the needs of those as-yet-unidentified storm victims. Furthermore, the state agreed that eligible households would include those in counties as far as a hundred miles inland—the extent of the hurricane's wind damage.

On November 15 Donovan, Barbour, and Morse announced the end of the plaintiffs' long fight in front of a room full of advocates, residents, and press with the plaintiffs in the front row. After the press conference, Donovan said: "[I]t's always better rather than fighting in court while families are still suffering to put our heads together and say, you know what, [the plaintiffs] had a point.… [U]nder the prior administration, there was a decision made that we didn't agree with; we went back and said you know what, we need to admit we were wrong, made a change and we're moving in a new direction …" (*WLOXtra: HUD Secretary Shaun Donovan on MS Housing Money* (WLOX television broadcast Nov. 15, 2010), http://bit.ly/eFCyXJ). The thousands of low-income Mississippians left out of the recovery are the beneficiaries of this new direction and now have the opportunity to receive housing assistance long overdue.

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Medical-Legal Partnership Helps Suspended Kindergarten Students Receive Special Education Services

Eric's and David's first year in school was not successful. They were from separate families and had different teachers and different classrooms, but their attendance records for the 2009–2010 school year were remarkably similar. They both enrolled in kindergarten at a charter school on the north side of St. Louis City in the fall of 2009, but they rarely attended. In their first year of school, Eric and David were suspended for more than nine weeks each because of behavioral problems. The suspensions were always fewer than ten consecutive days; this meant that the boys did not have the more expansive due process afforded students suspended or expelled for long periods. Instead Eric and David would serve a suspension, return to school for a few weeks or less, serve another suspension, and repeat. Eric's mother and David's mother both asked the school to conduct special education evaluations of their children, but the school never followed through. Luckily Eric's and David's mental health teams recognized these school problems as legal issues. The providers referred them to Legal Services of Eastern Missouri through the Children's Health Advocacy Project, the medical-legal partnership located on-site at the health center. Working together, the attorneys, physicians, psychologists, and social workers were able to use their professional expertise to obtain the evaluations and additional education services that Eric and David needed to succeed in school.

Factual Background

Eric and David each served their first suspension in October 2009 and served more frequent suspensions as the school year progressed. From January to April, Eric was suspended for a total of six weeks of school. The suspensions were for behavior such as running out of the classroom, turning over desks, kicking a teacher, yelling profanities, and being disruptive. In April the principal suggested to Eric's mother that Eric should

take an early summer break and return in the fall. Similarly David served five weeks of suspensions in the second half of the school year. David's behavior involved running out of the classroom, hitting another student, yelling profanities, throwing pencils, and being disruptive.

The school district began implementing behavior interventions outside the special education process in late 2009. The teachers and school counselors met to create plans to minimize the disruptive behavior. The plans created for Eric and David entailed assigned seats closer to the teacher, behavior charts as incentives for positive behavior, and the option to visit with the counselor whenever they became upset. These interventions had no impact on the high rate of suspensions for Eric and David.

Around the time of the boys' first suspensions, their pediatricians referred them to the same child development center at their neighborhood health clinic, Grace Hill Murphy-O'Fallon Health Center. At the center, both children began receiving treatment from a child psychologist and a neurodevelopmental behavioral pediatrician. Based on reports from the parents and school, the boys were diagnosed with attention deficit hyperactivity disorder and additional mental health disorders. The pediatrician prescribed medication for the attention deficit hyperactivity disorder. While the children were being evaluated and diagnosed at the clinic, the frequency of their suspensions increased.

The child development center also had social workers help the families coordinate therapy, school, and home. With permission from the parents, the social workers submitted treatment and diagnosis summaries to the school district. When the boys' suspensions increased in January, the social workers discussed the need for special education services with the families. With help from their social workers, David's mother requested in writing a special education evaluation in January; Eric's mother, in March. The social workers attended school meetings with the parents and advocated immediate special education evaluations. However, the school district continued to rely on the use of interventions instead of performing special education evaluations. As the end of the school year approached with more frequent suspensions and no sign of special education services, the social workers referred the families to Legal Services of Eastern Missouri through the medical-legal partnership on site at the center.

The families each filed under the Individuals with Disabilities Education Act an administrative complaint requesting a hearing through the Missouri Department of Elementary and Secondary Education (20 U.S.C. §§ 1400–1482 (2011)). The complaints were filed separately on the same day against the same charter school district.

Summary of Legal Claims

Legal Services of Eastern Missouri alleged, in the administrative complaints, that the school district failed (1) to evaluate the children in accordance with Child Find, the Individuals with Disabilities Education Act section requiring school districts to seek out affirmatively children who may qualify for special education services, (2) to respond to the parents' requests for special education evaluations within the appropriate timeline, and (3) to follow the required disciplinary process under special education law for students with disabilities.

Child Find. School districts' obligation to seek out affirmatively students potentially qualified for special education services is set forth in Child Find (20 U.S.C. § 1412(a)(3) (2011)). School districts are to identify and evaluate all children with disabilities—a requirement applying to children attending public school or private school in the district. In Eric's and David's cases the complaints alleged that the frequency of suspensions, length of suspensions, and information submitted by the boys' psychologists and pediatricians sufficed to trigger the district's Child Find obligation. The school district should have evaluated the children on its own initiative.

Parents' Request for a Special Education Evaluation. When a school district receives a request for a special education evaluation, the school district must either begin special education testing or notify the parent in writing that it is refusing the request. Missouri special education regulations require a response within thirty calendar days. A school district that is implementing interventions before considering a special education evaluation must still follow this timeline for responding to requests (Office of Special Education Policy Memorandum, 56 Individuals with Disabilities Education Law Report 50, 111 LRP 4677 (Jan. 21, 2011)). In these cases the school district never gave written notice refusing the parents' requests for special education evaluations. The school district continued to state that it required interventions before special education testing and that it would decide about evaluations once it knew whether the interventions were working. The school year ended with no evaluations and no written response from the school district.

Disciplinary Processes for Students with Disabilities. Under the Individuals with Disabilities Education Act, students with disabilities have additional rights in school discipline proceedings. These rights apply when a student is suspended for more than ten consecutive school days or when a student is suspended for more than ten days cumulatively if the suspensions form a pattern (34 C.F.R. § 300.530 (2011)). The factors to consider in determining whether the suspensions form a pattern are any substantial behavioral similarity in previous incidents, the length of each removal, the total amount of time the child has been suspended, and the proximity of the suspensions to one another (*id.* § 300.536(a)(2)).

If a series of suspensions constitutes a pattern, the school district must hold a manifestation determination meeting to determine if the behavior that led to the suspension is related to the student's disability (*id.* § 300.530(e)). If the behavior is related, the student returns to school at the student's original placement (20 U.S.C. § 1415(k)(1)(F)–(G)). If the behavior is not related, the student may be disciplined in the same manner as a student without a disability (*id.* § 1415(k)(1)(C)). These rights also apply to a student who has not been identified as a student with a disability if the school district is deemed to have knowledge that the student is a student with a disability (*id.* § 1415(k)(5)). A school district is deemed to have knowledge if the student's parent requests a special education evaluation (*id.* § 1415(k)(5)(B)(ii)).

Although Eric and David were not identified as special education students, the discipline protections applied once their parents requested special education evaluations. The complaints alleged that the series of suspensions in the second half of the school year constituted a pattern of suspensions that required

the special education discipline process. The complaints alleged in particular that the proximity of the suspensions demonstrated a pattern. Many of the suspensions occurred one to three days after the students returned from a prior suspension. The intention of the discipline protections in special education law is to prevent long-term removal of students with disabilities for behavior related to their disabilities. The boys were never suspended for more than ten school days at a time, but the series of suspensions resulted in removals for at least three out of five weeks of school.

Unique Timing

For education cases, and particularly in school discipline cases, a quick resolution is almost always essential. Each day spent strategizing, negotiating, and waiting for a hearing decision is another day a child spends out of school. Students with disabilities did not face this dilemma before the reauthorization of the Individuals with Disabilities Education Act in 2004. Before the reauthorization, the student remained in the original school placement pending a special education administrative hearing on the suspension of a student with a disability. After the 2004 amendments, however, the student remains in an alternative placement determined by the school district—often at home—until a favorable hearing decision or settlement is reached (20 U.S.C. § 1415(k)(4)).

Recognizing the need for quick resolutions under these circumstances, the Individuals with Disabilities Education Act requires an expedited timeline for hearings about school discipline. When a parent requests a hearing on an expedited timeline, the settlement conference or "resolution session" must be held within seven calendar days and the hearing within twenty school days (34 C.F.R. § 300.532(c) (2011)). The non-expedited timeline requires a resolution session within fifteen calendar days of the request and the hearing to be held within forty-five calendar days of the resolution session (*id.*).

Because Eric and David came to Legal Services of Eastern Missouri after the end of the school year, the benefit of an immediate resolution was minimal. The school district could not suspend them over summer break. The longer timeline allowed flexibility in choosing the claims to include in the administrative complaints and allowed the parents to negotiate from a stronger position. Since an expedited hearing timeline was not necessary, the administrative complaint could cite all of the boys' special education claims. The claims of the lack of special education evaluations could not be considered on an expedited timeline since they did not involve removal from school. With the entire summer to reach a resolution, the attorneys decided to combine all the claims and proceed on the longer administrative hearing timeline. The combined claims told a complete and more compelling story.

The Benefit of a Medical-Legal Partnership

Eric's and David's representation came about through the Children's Health Advocacy Project, a medical-legal partnership formed by Legal Services of Eastern Missouri and St. Louis University Law School with St. Louis Children's Hospital, Cardinal Glennon Children's Medical Center, and Grace Hill Health Centers (a federally qualified health center in St. Louis) (Legal Services of Eastern Missouri, Children's Health Advocacy Project, http://bit.ly/fPxSxP). The partnership is part of a network of eighty-three medical-legal partnerships coordinated by the National Center for Medical-Legal Partnerships (National Center for Medical-Legal Partnership, http://bit.ly/gpXUej). The partnerships are dedicated to integrating lawyers into the health care teams to alleviate social and legal issues affecting patient health.

The boys' educational and ultimately their mental health outcome was positively affected by the medical-legal partnership at their health clinic. A core component of medical-legal partnerships is education and training of health care providers to help them identify legal issues for referral, improve their health care delivery models for dealing with social and legal issues, and collaborate on policy change. All of these affected the outcome for Eric and David.

Eric and David likely would have never received legal assistance for their suspensions and the school's delay in conducting special education evaluations if not for the medical-legal partnership. Both families had been struggling with suspensions throughout the school year, but neither family was aware that free legal assistance was available. Since the start of the partnership, Legal Services of Eastern Missouri attorneys have held eight training sessions on education issues at the medical sites for physicians, nurses, psychologists, social workers, and other allied health staff. These sessions have raised awareness of the rights, under special education law, of children with disabilities. For Eric and David, this meant that their mental health teams were not only concerned with a good mental health outcome but also aware of how special education law could help achieve that outcome.

The training sessions also changed the way health care providers advocated for the families within the schools. Through the sessions the health care providers learned the importance of a request for a special education evaluation for children facing long-term or frequent suspensions. The social workers advised Eric's and David's families to request special education evaluations, and they helped them write the requests, which were essential to the administrative complaints. Two out of the three claims in the complaints relied on the requests. The families would have had no recourse under special education law for the frequent suspensions without the requests. The social workers faxed the requests to the schools, kept dated copies of the requests, and retained the fax confirmations—essential evidence in the administrative complaint and negotiations. The medical-legal partnership also played a role in crafting the settlement agreements in that the partnership consulted with the treating child psychologists to make sure that compensatory services would meet the children's specific mental health needs.

Resolving the Complaints

Special education law requires a resolution session, similar to a settlement conference, when a party requests an administrative hearing. An agreement reached through a resolution session is enforceable in state or federal court (34 C.F.R. § 300.510(d)(1)–(2) (2011)). Both complaints were settled with the school district at these meetings. For Eric, the school district agreed to conduct a special education evaluation over the summer and provide him with over 250 hours of compensa-

tory services in behavior management and one-on-one tutoring. For David, the school district agreed to conduct a special education evaluation over the summer and provide him with over ninety hours of compensatory services in behavior management and one-on-one tutoring.

Systemic Changes

Thanks to the team approach of a medical-legal partnership, Eric and David are both better off. However, the attorneys still have concerns about the same patterns of repeated suspensions that other students in the school district were having. The administrative hearing process is a poor forum for larger systemic issues. School district policy and practices were discussed during the negotiations in Eric's and David's cases, but the final agreement had no systemic changes.

To pressure the school district to make changes for other students, Legal Services of Eastern Missouri issued a press release in conjunction with the administrative complaints. The press release resulted in an article highlighting the complaints in a local newspaper (Elisa Crouch, *Confluence Academy Faces Complaint Over Suspensions*, STLTODAY.COM, July 9, 2010, http://bit.ly/f8iasv). The press release and the article turned attention to unmet special education needs in the school district but did not create large changes in the district's suspension practices.

Used successfully by the Southern Poverty Law Center, another option for resolving systemic special education issues is a state child complaint (Ronald K. Lospennato, *Multifaceted Strategies to Stop the School-to-Prison Pipeline*, 42 CLEARINGHOUSE REVIEW 528 (March–April 2009)). A state child complaint is filed with the state education agency (34 C.F.R. § 300.151 (2011)). The child complaint requires the education agency to investigate the claims in the complaint and issue a finding of compliance or noncompliance. A finding of noncompliance requires the state education agency to order corrective action, such as compensatory services or monetary reimbursement, as well as plan for appropriate future provision of services for children with disabilities (34 C.F.R. § 300.151(b)(1)–(2)(2011)). Filing a state child complaint for a class of similarly situated children is also possible. Eric's and David's attorneys considered filing a state child complaint in their cases but ultimately rejected this option due to the time required to complete the investigation, past results with the state complaint process, and the uncertainty of the outcome.

Through its work with Eric and David, Legal Services of Eastern Missouri learned three lessons for medical-legal partnerships to consider when resolving a legal issue. First, the strength of medical-legal partnerships lies in changing medical partners' approach to the issues. The training sessions that Legal Services of Eastern Missouri staff conducted for health care providers months before Eric and David met their attorneys were key to the positive outcome of the cases. Second, medical-legal partnerships based in legal aid organizations should use the in-house subject-matter expertise of the organization. The Legal Services of Eastern Missouri special education unit was a key partner in developing and resolving these cases. Third, medical partners should be used whenever possible to help produce larger systemic change. For example, medical partners should be invited to formal and informal negotiations with school districts and policymakers to discuss systemic change. Legal Services of Eastern Missouri is focused on partnering with its medical partners and other community agencies to work with school districts on systemic special education issues.

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Litigation in Federal and State Courts in Hawaii Preserves Critical Health Care for Micronesians

Hawaii is the most isolated populated land mass in the world, but its isolation has not protected its population from U.S. mainland trends that too often apply a slash-and-burn approach to the fundamental needs of low-income people. When the approach occurs in paradise, it is perhaps even more painful: the aloha spirit, or treating people with care and respect, is central to defining Hawaiians. One of the most desperate efforts by the state government to reduce a projected $1 billion deficit over the next two years involves its repeated attempts to restrict health care services severely for people who live in Hawaii under the Compact of Free Association (COFA) agreements with the United States.

Over the past year and a half Lawyers for Equal Justice and the organization's pro bono law firm partners have obtained from the federal district court in Hawaii orders enjoining the state from restricting or eliminating health care services to COFA residents on the grounds that such actions would violate the state Administrative Procedure Act (HAW. REV. STAT. §§ 91-1 *et seq.* (2010)) and the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution (see *Sound v. Koller*, No. 09-00409 JMS/KSC (D. Haw. Sept. 1, 2009); *Sound v. Hawaii*, No. 09-1-2022-08 GWBO (D. Haw. Aug. 31, 2009); *Korab v. Koller*, No. 10-00483 JMS/KSC (D. Haw. Dec. 13, 2010)).

Basic Health Hawaii

Under the COFA agreements, citizens from the three Micronesian nations (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) may "enter into, lawfully engage in occupations, and establish residence as a non-immigrant in the United States and its Territories and possessions…." (Pub. L. No. 99-239, art. IV, § 141(a), 99 Stat. 1770 (1986)). Citizens of these countries may enter the United States by applying for nonimmigrant entry and need to present only a valid passport.

Before 1996 COFA residents were eligible for federally funded health care under Medicaid, but under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1612(a)(1), they were reclassified as "nonqualified aliens" who became ineligible for matching federal funds. States were given the discretion to continue health care coverage entirely with state funds if they chose. Hawaii, along with

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