

CWWW

HALF FULL, HALF EMPTY: CHILDREN AND FAMILIES WITH SPECIAL NEEDS

Buried in Mayor Bloomberg's new financial plan for the city is a request that the state take responsibility for the care of foster children with developmental disabilities and mental illness. This is an old point of contention between the city and state, one that dates back more than two decades. Today, the mayor estimates New York City would save \$12 million if only Albany would live up to its obligation to pay for the care of these children, "in full."

Unfortunately, the mayor's message also refers to the "institutions" and "facilities" where these children should live. This word choice reveals a persistent disconnect that is emblematic of the dispute—a dispute that can and should be relegated to history as soon as possible.

Nowadays, it is more common—and preferable—for young people with developmental and emotional disabilities to live in their communities, and whenever possible with families or friends. Large institutions are intended to handle a crisis or a very severe, usually temporary, difficulty. Government-funded wraparound services, including respite care, in-home assistance and other family supports, make it possible not only for young people to live at home, but to attend school, have social lives, take part in recreation and hold jobs when they are older teens.

The longstanding dispute over dollars between city and state leaves many children unable to receive the services they need. In the article that begins on page 5 of this edition of the *Watch*, we learn about a young woman with cerebral palsy, paralysis and an active intelligence who at age 18 found herself discharged from foster care and stuck in a nursing home with no educational support and no social life. Placing such a woman in an "institution" or a "facility"

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rather than a house or apartment is anachronistic.

But it still happens, in part because of the disconnect between state and city policymakers and a mind-numbing quarrel over taxpayers' money. A dispute over funding should never undermine care for a human being; that's fundamental. As the *Watch* advisory board argues in our recommendations section on page 3, the cost of services for children with disabilities is ultimately a shared responsibility of the city and the state. With a new governor in office, there are steps both sides can take right now to make sure collaboration, not contention, becomes the standard.

In that vein, this edition of the *Watch* reflects a half-full, half-empty view of the status of child and family services in New York City. The mayor's new budget proposal, announced one year after the horrific murder of Nixzmary Brown, is in many ways a remarkable document that contains good news for child welfare agencies and the families they serve. In the context of a booming city economy and unprecedented tax revenues, the mayor has committed tens of millions of new dollars to child care and after school programs. Meanwhile the Bush administration has approved the first significant expansion of the Section 8 rental assistance program in more than a decade. And

Governor Spitzer has taken the first steps toward a huge increase in state funding for city schools.

There has also been a spectacular shift in child welfare spending that began in earnest two years ago. Even as foster care spending continues to decrease, support for preventive family support programs grew from \$123 million in 2004 to \$180 million in 2006, and the growth trend is continuing (see "More Than an Ounce for Prevention," page 13).

But it's easy to become distracted by good financial news while forgetting the difficulties rooted in current policy. For too many families, the city is becoming less and less affordable. More than 1.7 million New Yorkers, and one in three of the city's children, live in families with incomes below the federal poverty line. The reality is that the state and city government are still failing to address persistent, broad gaps in child and family services.

For example, there is a desperate need for new attention to special education services and advocacy for foster children (see "Struggles at School," page 9); and the lack of coordination between the schools and the city's growing network of preventive family support agencies is troubling. That network may well be receiving more funds than ever before, but its capacity remains limited and the network sorely lacks integration with other community-based institutions and services.

During the year that followed Nixzmary Brown's murder, child protective investigators' caseloads soared to levels not seen since 1996. The mayor's budget includes money for hundreds of new child protection workers as well as new Family Court attorneys. But responding to a one-year surge in reports with more front-end crisis intervention is only part of the solution. If we are to truly help struggling families move from poverty to stability and success, then further building and strengthening community-based family support services—counseling, case management, domestic violence interventions, homemaking, health and mental health services, rental and income assistance and much more—will have to be at the very center of city social policy for years to come.

New York may be better off today than in years past, at least through the lens of the city budget and the economy. But there is still a very long way to go. ♦ —ANDREW WHITE

- Several New York City foster children with disabilities have been discharged to huge nursing homes. Advocates are calling on the city child welfare agency and the state's Office of Mental Retardation and Developmental Disabilities to resolve longstanding disputes and ensure such young people move to small, supported homes in their communities. (See "Kids Without Champions," page 5.)
- An estimated 4,700 city foster children are enrolled in special education. New advocacy efforts are trying to make sure they receive the services they have been promised. (See "Struggles at School," page 9.)
- Over the last two fiscal years, the city's Administration for Children's Services has upped its annual preventive-care budget by a remarkable 59 percent. Much of the increase has been in targeted initiatives aimed at teens, infants and families with children returning from foster care. (See "More Than An Ounce for Prevention," page 13.)
- Adoption too often means the loss of family ties and sibling relationships. A handful of pilot programs nationwide, including two in New York City, are striving to make adoption a more welcome option, especially for older foster children. (See "Forever Family, No Regrets," page 15.)

The Child Welfare Fund is interested in supporting projects to implement the recommendations of the *Child Welfare Watch* Advisory Board. For application guidelines, please contact:
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The Fund for Social Change
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Recommendations and Solutions proposed by *Child Welfare Watch*

In this issue of the Watch, we address some of the thorniest problems faced by public officials managing child and family policy. These include access to—and the quality of—special education; provision of supports for young people with disabilities; reform of laws and policies guiding adoption; and the elusive coordination of systems and funding streams that reach across multiple levels of government. In an attempt to distill solutions for some of the most pressing needs, the Child Welfare Watch advisory board offers the following recommendations:

THE SPITZER AND BLOOMBERG ADMINISTRATIONS MUST FULLY INTEGRATE SUPPORT SERVICES FOR CHILDREN WITH DEVELOPMENTAL AND EMOTIONAL DISABILITIES WHO ARE ENGAGED WITH THE CHILD WELFARE SYSTEM.

There are hundreds of New York foster children with developmental disabilities and probably thousands more in families investigated each year by child protective services. Unfortunately, many do not receive the federal- and state-funded support services for which they are eligible.

Sometimes, children with disabilities are placed in foster care because child welfare authorities and preventive family support agencies fail to organize and coordinate the services that would make it possible for them to stay with their families. Children with disabilities already in foster care often don't have access to the breadth of support services received by children whose parents and state-funded service providers know how to press for excellent care. These services include homecare and other one-on-one staff supports, respite care programs, transportation, special equipment and programmatic services such as recreation, parent outreach and education, life skills training and, for older teens and young adults, job placement and supports.

What's more, some young people with disabilities have aged out of foster care only to languish in nursing homes or other institutions without attention being given to their social interests or educational needs.

Overcoming these systemic failures will require extensive, high-level collaboration between the state's Office of Mental Retardation and Developmental Disabilities (OMRDD), which manages Medicaid-funded support services for people with

developmental disabilities, and the city's Administration for Children's Services (ACS), which oversees the child welfare system. While the relationship between these two agencies has been fraught with litigious conflict, a new gubernatorial administration may help put that aside. City Hall and the Spitzer administration should establish a joint working group and press for a resolution.

Every foster child with developmental disabilities should have ready access to wraparound support services and educational advocacy. They must also receive careful planning support from case managers or consultants with expertise in both the OMRDD and special education systems. Many young people need long-term, focused planning that will enable them to move into community residential settings that don't restrict their social lives or limit their educational and employment opportunities. Similarly, every effort must be made to provide in-home family support services in order to prevent the placement of children with disabilities in foster care simply because of inadequate resources. New York State has a wealth of services available to people with disabilities, but it takes work to align them with each individual and family. At a policy and program level, this will include the following:

- Adequate funding and new, coordinated administrative structures designed to achieve these goals could be worked out between the executive leadership of OMRDD and ACS. As the city child welfare agency becomes increasingly oriented toward the coordination of supportive resources for families, its executive leadership and frontline staff must do more to help families gain access to the long-term supports OMRDD brings to tens of

thousands of New York families.

- State- and city-funded nonprofit provider agencies that offer both child welfare and developmental disabilities services should be given incentives by OMRDD and ACS to create small teams of workers dedicated to handling cases that traverse the artificial boundaries imposed by different funding streams and bureaucratic necessities. ACS should direct families and children to those organizations that prove they can do this work well.

- In addition, ACS should provide its child protective specialists with easy access to clinical specialists in developmental disabilities services, much as they have access today to specialists in substance abuse, domestic violence and mental health.

The InterAgency Council of Mental Retardation and Developmental Disabilities Agencies has produced a more detailed set of recommendations that, if followed, would help move OMRDD and ACS beyond the stalemate of litigation and toward desperately needed cross-system collaboration.

ACS AND ITS CONTRACT AGENCIES SHOULD TRAIN PARENTS AND FOSTER PARENTS TO BECOME ASSERTIVE ADVOCATES FOR CHILDREN'S SPECIAL EDUCATION NEEDS.

Children engaged with the child welfare system are far more likely to need special education services than those who are not—but far too often, the services they receive don't fit their needs. Frequently, a child needs an advocate to ensure that an appropriate education plan is put in place and followed.

Attorneys in nonprofit organizations and officials at ACS have begun to advance a number of small-scale efforts to improve special education advocacy for children in foster care and among families taking part in preventive services. They have learned important lessons—and witnessed the unmatched value of trained parents acting as advocates for their own children. In situations where foster parents are able to advocate alongside parents, they are able to prepare the ground for ongoing oversight of services long after the family is reunified.

ACS could significantly boost efforts to train and support parents in educational advocacy by collaborating with existing legal assistance programs, nonprofit contract agencies and other training projects, including agencies funded by the federal government to provide information, training and support to families of children with disabilities, such as Advocates for Children of NYC, Resources for Children with Special Needs, Sinergia/Metropolitan Parent Center and United We Stand in Brooklyn.

In addition, the city's Department of Education needs to vastly improve its communication with parents and caregivers—including foster parents—about what special education services they are entitled to receive and how to obtain them.

ACS-FUNDED FOSTER CARE AND FAMILY SUPPORT AGENCIES SHOULD EMPLOY EDUCATION SPECIALISTS.

Special education without a parent or advocate is hit or miss, and sometimes a dumping ground for children who need educational and other supports to succeed in school. With an estimated 30 percent of foster children in special education programs, the city—technically the guardian of all foster children—and the nonprofit agencies overseeing foster homes and

services, must have capable specialists on staff to provide educational advocacy and oversight. These specialists must be trained by experienced advocates who are knowledgeable not only about special education laws and regulations but also about best practices in special education and effective advocacy strategies.

Increasing the number of education specialists costs money, but the expenses invested here have payoffs in both the short and long term. When a young person returns home after spending time in foster care, the quality of his or her school placement has a large impact on behavior and stability. Agencies that supply strong educational advocacy have seen reductions in the number of children who return to care after going home to their parents, so this is a valid purpose for reinvestment of funds saved through cost reductions in the larger foster care system. And of course, in the long term, success in school relates directly to stability and economic success as an adult.

STATE LEGISLATORS AND THE SPITZER ADMINISTRATION, WITH SUPPORT FROM THE BLOOMBERG ADMINISTRATION, SHOULD DRAFT AND PASS OPEN ADOPTION LEGISLATION.

Often, adoption involves the final severing

of ties between a child and his or her family. But when a child has longstanding relationships with siblings, parents or relatives, the finality of this arrangement is not always desirable. Many older foster children shy away from adoption because of this potential loss of contact—and half of the city's foster children who have adoption as a goal are 10 years of age or older.

In New York, parents who voluntarily surrender a child can make a legally enforceable post-adoption contact agreement with the adoptive parents. But this only covers some of the many foster children adopted each year. Others must rely on informal agreements—or no agreement at all.

Other states have broader open adoption laws that allow birth families to work with adoptive families, mediators and the courts to define the connections they want with their child after he or she has been adopted. These can range from allowing the child simply to know who his or her birth parent is, to agreeing to letters, photos or phone contact, to having scheduled visits. Court-enforced open adoption cements the agreement and can make foster youth and their birth families more comfortable in choosing adoption. ♦

News Brief

A VOICE FOR PARENTS IN FAMILY COURT

A long-awaited legal reform advanced a step in January, when the city began negotiating contracts with three nonprofits to represent low-income parents in abuse and neglect cases in Family Court. The agencies will provide parents with added legal resources, such as investigators and social workers, that even court administrators say are too often lacking under the current system of assigned “18b” attorneys.

The city's Criminal Justice Coordinator's office is negotiating two-year contracts for parent representation services with Bronx Defenders for abuse and neglect cases in the Bronx; Legal Services for New York City for cases in Brooklyn; and The Center for Family

Representation for cases in Manhattan. So far, city officials say they have not received any suitable proposals from agencies in Staten Island or Queens.

The city plans to spend up to a total of \$10 million per year for parent representation services covering at least half of all new child protective cases in each of the city's five boroughs. The program is slated to begin in early spring.

Among the problems that parents and child welfare advocates have cited with the 18b system are too little communication between parents and assigned attorneys, and too little time and resources available for the type of intensive investigations required in Family Court. In early 2006, *Child Welfare Watch* recommended an overhaul of the 18b system and a move toward organization-based representation (see

CWW 12, “A Matter of Judgment”).

Some progress had already been made. In 2004, the city upped the hourly pay for 18b attorneys from \$45 to \$75 in an effort to improve the situation. Yet the new contracts represent a more far reaching reform of the system—one that aims to link parents to services that can affect their cases, such as housing, immigration and job counseling, in addition to offering legal advice.

“This provides another level of support and advocacy for parents,” says Scott Sigal, the city's deputy criminal justice coordinator. “We also think it will add a layer of oversight that's important. It can become a voice for change for parents, a way to drive reform and look at trends across the entire county.” ♦

—BARBARA SOLOW

KIDS WITHOUT CHAMPIONS

A dispute between city and state agencies has kept some foster care youth with disabilities from getting the services they need.

Permanent discharge. That was the decision made by New York City's Administration for Children's Services (ACS) in the case of L.J., a teenager with cerebral palsy, quadriplegia and depression. After her parents placed her in foster care in 2001, she attended the Woods School in Pennsylvania. Two years later, when L.J. turned 18, ACS discharged her to a Long Island nursing home.

While L.J.'s condition limits her ability to get around and care for herself, she is still functioning at a relatively high level, according to a lawsuit filed last year on her behalf by New York Lawyers for the Public Interest (NYLPI). A 2003 psychological review that was part of her ACS case file found that with "some instruction, support and encouragement," she could attend a regular school, take part in afterschool activities and go out with friends. Instead, she was placed in Bayview Manor Home in Island Park, a skilled nursing facility for adults.

ACS claims that L.J.'s parents approved her transfer to the nursing home. But Roberta Mueller, L.J.'s lawyer and a senior staff attorney at NYLPI, says that is not the case—and even if it were, since L.J. was in foster care, it was ACS's responsibility to find her a home that matched her needs. It's unclear from court documents why ACS never referred her case to the state Office of Mental Retardation and Developmental Disabilities (OMRDD), which provides community-based housing and support services to children and adults with conditions like L.J.'s. Until the public interest law firm intervened, L.J. was never even evaluated for those services.

Advocates say too many New York City children and young adults are falling through that very same gap. Mueller's suit argues that the failure to find L.J. a suitable home stems from a decades-old turf battle between ACS and OMRDD over who should care for foster children with developmental disabilities. Ideally, she says, the two agencies should be working together to provide services that will allow such children to stay in their homes or be placed in family residential settings. But because of a striking lack of cooperation between the two systems, foster care children too often end up in overly restrictive placements or without the help they are entitled to receive.

That's how L.J. wound up in Bayview, Mueller says. With no one from either ACS or OMRDD championing her needs, when she reached the age of 18, the city agency simply discharged her from foster care into a state

Department of Health-run institution. A 2005 Department of Health survey found 11 other foster care children placed by ACS in Bayview.

"It's a system that's broken," Mueller says. "We only see little tips of the really bad things: the kids that are stuck in psychiatric hospitals and the kids that are sitting in nursing homes."

Neither ACS nor OMRDD would comment on L.J.'s case, nor would they discuss their procedures for evaluating and finding homes for foster care children with disabilities. But observers with knowledge of both systems say there is a basic disconnect that puts such children at a disadvantage.

"IT'S A SYSTEM THAT'S BROKEN. WE ONLY SEE LITTLE TIPS OF THE REALLY BAD THINGS: THE KIDS THAT ARE STUCK IN PSYCHIATRIC HOSPITALS AND THE KIDS THAT ARE SITTING IN NURSING HOMES."

"There is a dichotomy between the social welfare system and the disability system," says Mike Dillon, assistant professor of Special Education at Dowling College in Oakdale, Long Island, who worked for 20 years as director of the Syracuse Developmental Services Office of OMRDD. "If you are owned by one, you get this [service], if you are owned by the other, you get that."

The result is a safety net full of holes for foster care children with disabilities, he adds. "There is a certain spectrum of kids who don't get picked up," Dillon says. "I don't think people are reaching out or pushing the envelope or making themselves all that available. People would really have to work on it to get assessments."

ROBERTA MUELLER WAS VISITING ANOTHER

client at Bayview when she met L.J. by chance. She was outraged the young girl appeared to have been left there with little concern for her emotional health or educational advancement. In February 2006, NYLPI filed a lawsuit, later joined by Lawyers for Children, on behalf of L.J. and other plaintiffs in similar circumstances, against both ACS and OMRDD, arguing that the two agencies are flouting a federal law that requires people with disabilities to be placed in the least restrictive settings possible.

The complaint piggybacks on a 2004 lawsuit the City of New York filed against OMRDD, which argued that the state agency had failed to “provide placements and services to mentally retarded and developmentally disabled children.” Seven foster children in need of residential care were forced to wait as long as six years for a placement, that suit contends, while hundreds more were stuck on a waiting list.

The suit called on OMRDD to place the children in appropriate residential settings, create new procedures for children referred to the state agency by the city, and provide in-home and community-based services to children in foster care. Mueller’s complaint adds L.J. and other children with inappropriate placements to the city’s suit against the state, so they too will qualify for better planning and placements, along with compensatory damages. Judge Marilyn Shafer recently agreed to consider both suits together.

"WE HAVE A SERIOUS, IMPORTANT DISAGREEMENT WITH THE STATE ABOUT HOW THESE KIDS SHOULD BE HANDLED."

The city’s Law Department would not comment on its still-pending 2004 suit. But Alan Kleinman, senior council in the department’s Affirmative Litigation Division, summarized its position in an interview last winter: “We have a serious, important disagreement with the state about how these kids should be handled,” he said.

This isn’t the first time ACS and OMRDD have wrangled. In 1985, the City of New York filed suit against the state, citing long delays for foster children with developmental disabilities in need of residential placement. “Even though OMRDD has repeatedly ‘accepted’ such persons for placement, or has otherwise admitted that such persons are eligible for placement in

OMRDD facilities, it has persistently failed to place, care or treat these persons,” states the 1985 complaint.

The city’s newest lawsuit revives that criticism and gives some evidence of what it calls OMRDD’s failure to serve foster children with disabilities. For instance, in 2002, according to court papers, OMRDD approved 92 foster children for placement in residential care, but actually placed only 41. In 2003, the agency approved 85, but placed only 49.

While the city’s foster care system can accommodate children with mild emotional and physical disabilities, court papers say, it has few beds for those who require around-the-clock care. Such homes are the purview of OMRDD, which serves both children and adults with disabilities. In response to the 1985 lawsuit, OMRDD agreed to place 200 individuals each year for four years in group homes and other facilities it licenses. But according to the city’s new lawsuit, it never met those targets.

In addition, the suit contends, the long wait time for community residences results in more children being sent out of state for care. “As a result of OMRDD’s failure to respond to ACS requests for residential placements... ACS must often locate out-of-state placements for children, which are far from the child’s family and caseworker and expensive to the City,” the lawsuit says. ACS has also accused OMRDD of failing to deliver in-home services to youth in foster care, such as health aides, respite care, mental health care or physical therapy.

In court papers, OMRDD has argued that the city and state share responsibility for people with mental retardation and developmental disabilities and that ACS should take the lead when it comes to children in its care. OMRDD says it has limited resources, and foster care children who are evaluated and deemed eligible for its services are put on the same waiting lists as anyone else. The state agency also insists it’s up to ACS to identify those children and direct them into OMRDD’s pipeline.

“New York law imposes no legal obligation upon OMRDD to place the Plaintiff Children in an OMRDD facility at all, much less to place them in an OMRDD facility at a particular time,” wrote state Assistant Attorney General Michael Peeples in an April 2004 court document. The same, he wrote, is true of service requests. “In establishing OMRDD, the Legislation recognized inherent limitations on the facilities, funds and other resources available to carry out its mission,” the document states.

WHILE BOTH ACS AND OMRDD SEEK TO

provide community-based services to those who need them, their emphasis is very different. And that difference affects how each agency views families, explains Hector Morell, special assistant for community-based programs at Leake and Watts, a child service agency with offices in Yonkers and the Bronx.

In one of his current cases, for example, a single mother in the Bronx is struggling to care for a child with severe autism along

with her three other children. When her son, a 10-year-old who is blind, autistic and nonverbal, was kicked out of school for tantrums, she had trouble finding him another placement. Unable to control him, she resorted to medication and hospital stays. A visit from an ACS worker revealed a chaotic home, one in which the boy was truant and his siblings were acting out to get attention.

The ACS worker blamed the mother for losing control and wanted to file a neglect complaint against her, explains Morell, who has worked with children in foster care as well as those with developmental disabilities. Only after extensive negotiations was he able to convince the worker to take a less punitive approach. Morrell helped find a new school for the boy and get him occupational and physical therapy at home from OMRDD. While the situation is far from resolved, he says, the mother now feels supported and the boy's behavior has improved.

Still, he sees this case as an example of how a lack of coordination between ACS and OMRDD does a disservice to children and families. Even with the ACS liaison set up to handle disability cases, he says, "It's like you're speaking a whole other language."

The same is often true on the foster care end, says Bob McMahon, executive director of the Long Island-based SCO Family of Services, which operates a residential treatment campus in Sea Cliff for 73 children with severe disabilities, 68 of them foster children. It can be hard to find residential placements for foster care kids with disabilities on the emergency timeframe that ACS requires, he says. On the other hand, residences run by OMRDD "have no emphasis on the return home because it's a lifetime system," McMahon says. "So for foster kids, OMRDD is not a good initial placement."

His own facility, which is licensed by the state Office of Children and Family Services and accepts children from ACS, also applied to OMRDD for a license but was deemed ineligible because of its large size and somewhat isolated location. In recent decades, in response to the desires of people with disabilities and their families, OMRDD has reduced its reliance on large facilities and campuses in favor of smaller, community-based residences.

McMahon is among those who would like to see OMRDD devote more of those community residential slots to foster children. "ACS is not out there creating more beds," he notes. "They are looking to OMRDD for that." The state agency also pays higher rates to residential providers than ACS does for the foster homes and residential schools it contracts with.

The tension between ACS and OMRDD isn't helping anyone come up with better services for children, McMahon says. "We need public policy and good administration on this, not lawsuits," he says. "That just creates inaction."

The best outcome, he adds, would be an OMRDD system that provides more wraparound services and supports that would allow foster children with disabilities to remain in their

homes. "A. It's cheaper; B. It's better for the child; and C. The child doesn't have to be in an institution," McMahon says. "They can be at home and getting the services they need."

THE PUSH FOR COMMUNITY-BASED CARE FOR

children with developmental disabilities dates back to the 1970s, when a high-profile investigation of the Willowbrook State School in Staten Island uncovered neglect and abuse of children in institutional care. In response, state officials moved to close large institutions and develop smaller group homes for people with developmental disabilities.

"The whole world broke open," recalls Maggy Ames, executive director of the InterAgency Council of Mental Retardation and Developmental Disabilities Agencies (IAC), an umbrella group of service providers.

Unlike adults with mental illness who were often thrust out of hospitals with nowhere to go, children and adults with developmental disabilities have fared much better, she explains, thanks to a parent-led grassroots effort to quickly create new group homes in community settings.

Yet while Ames praises the state's current network as "the best MRDD system in the world," the number of community beds still hasn't caught up to the level of demand. She estimates that it takes an average of 18 months to develop a new placement, which entails finding a home, buying it and making sure it meets the physical needs of the future residents. And children—foster children included—haven't traditionally been at the top of the list. After Willowbrook, adults with severe disabilities and aging parents were seen as the more pressing priority for placement in community-based group homes, Ames explains, because they were in danger of being left alone.

There are signs, however, that the state has begun to focus more attention on children. In a report outlining its current \$3.3 billion budget, OMRDD announced a new task force to oversee the development of new services and placements for children with special medical needs. The agency is also involved in discussions with the state Department of Health and the Office of Children and Family Services on targeting federal Medicaid services to foster children with emotional, physical and developmental disabilities.

But no one should expect change overnight, cautions Ames. Along with a massive budget, OMRDD also has a massive responsibility: caring for every person with developmental disabilities throughout the state. And, unlike ACS, which intervenes in emergencies and then ideally returns children to their homes, OMRDD often has clients on its caseload for their entire lives.

That distinction sometimes keeps foster children in OMRDD facilities from reunifying with their parents, says Jessica Marcus, a staff attorney with South Brooklyn Legal Services.

TWO AGENCIES, TWO DISTINCT MISSIONS

NYC ADMINISTRATION FOR CHILDREN'S SERVICES

- **Budget for Fiscal Year 2007:** \$2.5 billion
- **Mission:** To protect children from abuse and neglect; provide preventive and foster care services; ensure timely reunification or adoption services; and ensure access to high quality, safe child care and Head Start services.
- **Number of children in foster care (June 2006):** 16,285
- **Number of children in group homes and residential treatment facilities (June 2006):** 2,846
- **Age at which children are discharged from care if they are neither reunified with family nor adopted:** 18–21

NEW YORK STATE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

- **Budget for Fiscal Year 2007:** \$3.3 billion
- **Mission:** To develop programs and services that promote "independence, inclusion, individuality and productivity" for people with mental retardation and developmental disabilities.
- **Number of children served in NYC in 2005 (most recent data available):** 18,210
- **Number of foster children served:** Not available.
- **Number of city residents in "Family Care," a program that houses people with developmental disabilities with families who receive monthly stipends from the state for their services (2005):** 497
- **Age at which children are discharged from care:** No age limit

She currently has one case in which a 16-year-old boy with moderate mental retardation has lived apart from his family for several years—first in an ACS residential treatment center and then in an OMRDD-licensed residential program. Though his mother is now prepared and eager to take him back, OMRDD has been unable to find him a placement closer to home.

"One agency knows the child and one knows the family," Marcus says. "But you end up with nobody willing to say the child can come home because no one has all the information."

THE INTERAGENCY COUNCIL RECENTLY

presented a position paper to both ACS and OMRDD that calls for a "cross-system" approach to nearly every level of care, including case identification, discharge planning, fiscal responsibility and oversight. It suggests, for instance, the designation

of special respite providers in each borough, and crisis workers trained by OMRDD who would be on call 24 hours to assist ACS when there's a sudden problem in a home. In a case like Morrell's, for instance, the mother could call a crisis line for help if her son becomes violent, rather than having to fall back on the police and hospitals. Similarly, it suggests the creation of dual agency-certified homes for foster children, as well as OMRDD crisis beds, which would serve foster children placed in care for shorter periods of time.

The proposal includes funding recommendations for each suggestion—generally some type of cost sharing between the two agencies so they can get around spending barriers designed to prevent "double dipping" from Medicaid. ACS would pay for room and board, as they would with any other child, while OMRDD would pay for most supplemental services. "There has to be a conceptual agreement on shared financial responsibility," Ames says. "If they're going to keep trying to shove it off on each other's budget, we're never going to get there."

Neither ACS nor OMRDD would comment on the plan due to the pending lawsuits, but Kleinman, from the city's Law Department, confirms that it is under review. "Both ACS and this office have received that thoughtful piece and we are looking at it and exploring it," he says.

For her part, Ames hopes that the ideas contained in the position paper could finally help put the dispute between the city and state over foster care children to rest. "We have to get to the stage when children in foster care are treated like any other child in the [OMRDD] system," she says, "and children with developmental disabilities are treated like any other foster child."

In the meantime, children like L.J. will need advocates to get the services they deserve. L.J.'s attorney, Mueller, says the teenager recently moved out of Bayview Manor Home and into an OMRDD-funded community placement. She credits the lawsuit with hastening that assistance.

Meanwhile, ACS is drafting new guidelines that govern when foster children get placed in nursing homes, and recently hired Dr. Angel Mendoza to help oversee such decisions. Mendoza, a pediatrician with experience serving children with special health care needs, was named assistant commissioner for ACS' Office of Child and Family Health in September.

Advocates say if ACS and OMRDD cooperated, the system could provide better options to children with developmental disabilities. The two agencies could create alternatives like therapeutic foster care beds or comprehensive support services that help keep families together.

They could also ensure a smoother transition for children like L.J. who are aging out of foster care, leaving the child welfare system—and relying on OMRDD.

"I think it would have to be a joint effort," attorney Mueller says. "That makes the most sense." ♦ —**CASSI FELDMAN**

STRUGGLES AT SCHOOL

For too many children in foster care, the special education system throws up new barriers at every turn.

If all goes well, 18-year-old Tyshoun Coleman will graduate from high school this January. He almost didn't make it. Last fall, he sat in a special education class with 14 other students. Classified as learning disabled, Coleman was in his fourth year of high school but had only 15 of the 44 credits he would need to finish. That's because he'd failed most of his subjects the year before, attending classes rarely. He says he was bored and not learning anything. "They go over the same material over and over again," Coleman complains. "If you look at the assignments, they would say '6th grade.' They shouldn't do that to special ed students. They should challenge you a bit."

Coleman is in foster care, where he's been since he was 8, following a harrowing year bouncing from relative to relative when his mom disappeared into the drug life. He has no idea how long he's been in special education. "Ever since I can remember, I was in there," he says. Over the years, he's pleaded with counselors and caseworkers to get him into a more advanced class. "They'd tell you, 'Oh, we're going to handle it,' but nothing was being done."

His high school eventually asked Coleman to leave and attend a GED program. Only then did his caseworker at Forestdale, a child welfare agency in Queens, take action. But the GED program told her that at 17, he was a year too young to enroll. The exasperated caseworker turned to Erika Palmer, an attorney with an advocacy program called Project Achieve that had recently begun to work with Forestdale. Palmer arranged for a new evaluation for Coleman, which confirmed he didn't need to be in special education.

Coleman still gets extra help for his math disability: he goes to "resource room" every day for group tutoring. But he now spends most of the school day in a general education class at Business Magnet High School in Cambria Heights near the home where he lives with his grandmother. Coleman is already planning for life after graduation: business and culinary training, and ultimately his own restaurant.

While his story resolved happily, for too many children in foster care, navigating the special education system is a dead-end journey.

Since the 1970s, all young people with disabilities in the U.S. have had the legal right to a "free appropriate public education" in the "least restrictive environment." But without stable homes and caregivers to keep an eye on their progress and make sure schools comply with the law, foster children are at a particular

disadvantage. Like Coleman, many end up in overly restrictive placements. A great many others fail to receive ordered services, or don't get their needs appropriately evaluated in the first place, according to parents, attorneys, advocates and the children themselves.

"You have people who are not sure of who is responsible for the child," observes Palmer. "You have situations where no one is taking responsibility."

"SPECIAL ED" CONSISTS OF MUCH MORE THAN segregated classrooms and schools for children with physical, mental or learning disabilities. Many children with special needs are integrated into small classrooms with two teachers and a mix of children both with and without disabilities. Some children with developmental disabilities attend specialized private schools, paid for by the city and state. Many others attend general education classes but also receive special services during the day or after school.

Neither the New York City Department of Education nor the Administration for Children's Services (ACS) knows exactly how many foster children are enrolled in special education. But there is evidence that young people in foster care are heavily over-represented. The last time ACS reviewed the overall school performance of foster children, in a 2001 report the agency commissioned from the Vera Institute of Justice, researchers concluded that between 20 and 23 percent of the children who had entered foster care between 1995 and 1999 were in separate classes designated for children with disabilities, compared with 8 percent of students citywide. A 2000 federal review of child welfare case records in New York City found that about 29 percent of school-age foster children were enrolled in special education programs—equivalent to about 4,700 foster children today.

Other research has revealed the immensity of the challenge. A 2000 UCLA study of several hundred 6- to 12-year-old foster children in Los Angeles found that 23 percent had a reading or math skill delay so extreme they scored at or below the first percentile for their age. And these severely impaired children represent just a fraction of those eligible for special education services under federal law, which covers all children whose achievement lags behind their age group's standard and who do not make sufficient progress following initial intervention.

There's no doubt that foster children need—and receive—special education services at rates higher than the general youth

population of the city. But merely being placed in a special education class or assigned to therapy is no guarantee a child will get an “appropriate public education.” Even when the public schools agree to provide services, they don’t always deliver. The Center Without Walls, a joint project of two nonprofit organizations, Advocates for Children and Resources for Children with Special Needs, recently surveyed 160 foster parents who attended the center’s training sessions on educational advocacy. Those foster parents may not be typical, but their experience is striking: Thirty percent of those who had children enrolled in special education reported that the children had not received services the schools had promised to deliver.

Children in special education have strong and unique rights under federal law—but those who are also in foster care typically have limited opportunities or ability to enforce those rights. A child foundering in a special education class can obtain a re-evaluation of her cognitive functioning and seek a new school or service that’s a better fit. That review and appeals process—the process that moved Coleman into general education—takes time and effort. Yet foster children don’t have at their side the very advocates the federal law depends on to do this work: their own parents.

The Individuals with Disabilities in Education Act (IDEA), the 1975 federal law governing special education, anticipates that a child’s parents will collaborate with school districts to identify adequate programs and services. But birth parents of foster children are barred from seeing children most of the week, and may live far from their schools. Lacking day-to-day contact, they usually aren’t in a position to keep an eye on how children are progressing in school.

Foster parents, meanwhile, typically start with little sense of a child’s educational history or knowledge of the special education system. Fewer than one-quarter of foster parents surveyed by the Center Without Walls had received any training at all about the education system.

THAT’S WHY THREE GROUPS OF ATTORNEYS

and social workers—including a team fielded by the city’s Administration for Children’s Services (ACS)—have begun to build new advocacy and training programs to make sure more foster children get educational services that help them stay in school and learn. So far, these remain modest efforts, reaching only a small fraction of the children who need them. Project Achieve, a program of the education group Advocates for Children, works with children whose families are receiving preventive services as well as those in foster care, helping families deal with school problems before they spiral into educational neglect cases. Meanwhile, ACS and the Legal Aid Society work only with children who have been removed from their families. Their work so far reveals just how indispensable individual advocacy is for children in special education.

CHILDREN IN SPECIAL EDUCATION HAVE STRONG RIGHTS UNDER FEDERAL LAW— BUT THOSE WHO ARE ALSO IN FOSTER CARE TYPICALLY HAVE LIMITED ABILITY TO ENFORCE THOSE RIGHTS.

At Legal Aid, the Kathryn A. McDonald Education Advocacy Project, established in 2001, advises children’s attorneys on special education matters and takes legal action when it can’t get results from the city Department of Education. The project also trains parents and foster parents. “It’s really important for them to know how to navigate these systems,” says project director Kara Chambers. “Ideally ACS involvement is going to end at some point, and a parent or foster parent is going to end up caring for the child on a long-term basis.”

In January 2006, two former leaders of the Legal Aid Project, Katherine Locker and Nellis Kim, launched the Children’s Services Education Unit at ACS. Meanwhile, Project Achieve is working with caseworkers, foster parents and birth parents at two private agencies, Forestdale and Graham-Windham.

Targeted advocacy has had an impact. Project Achieve reports that in the two years following its founding in 2002, its attorneys resolved 60 out of 75 cases of foster care children requesting changes in services. Eighty-five percent of those cases involved special education services. More profoundly, Project Achieve aims to equip child welfare agencies, and by extension parents and foster parents, to do advocacy work on their own. “We’re finding that agency culture changes,” adds Gisele Alvarez of Advocates for Children. “It does take time for that to happen. It also takes leadership from the management of the agency.”

MOST DECISIONS ABOUT SPECIAL EDUCATION

happen at the local school level. Each school has a psychologist on staff whose duties include coordinating “Individualized Education Plans” (IEPs) for children with disabilities. Under federal law, IEPs must be drafted collaboratively by a team that includes the child’s parents and teacher. Children in special

education must be evaluated at least once every three years, and any child must be given a review when a parent requests it. When issues can't be resolved at the school, the special education review may be conducted by the Committee on Special Education (CSE) based in each Department of Education regional office.

If all goes well, reviewers identify an appropriate placement and draft an effective education plan. But advocates say sometimes the recommendations are inappropriate or hard to enact. In September 2004, according to Department of Education data, two-thirds of students whose IEPs required occupational therapy had not found a provider; by April 2005, more than one-third were still waiting. "The fields of speech, occupational therapy, and physical therapy represent shortage

areas, both nationally and locally," acknowledges Lindsey Harr, a spokesperson for the Department of Education. When no therapist is available, the department may give permission for families to be reimbursed for private services, but that process is not automatic: a parent must request it.

Children who cannot get what they need in public schools can request a spot in a private school. In the past decade, the Department of Education has become sharply more reliant on private schools and services. In 1995, the city and state paid about \$82 million for private schools and services for special education students the public system couldn't serve. This year, DOE is set to spend about \$844 million.

When a child is in foster care, the special education

PARENTS TAKE COMMAND

When Safiyah McLean moved from Harlem into her Crown Heights foster home two years ago, Graham-Windham foster parent Inez Lindsey knew that the girl, then 8, had been in special education. Like her three brothers, Safiyah had speech and language delays that called for visually oriented teaching methods. But that was all the information Lindsey had. Once she was in her new school, in East New York, Safiyah started with a blank slate.

Most children change schools after entering foster care, but their school documents do not necessarily travel with them. Department of Education regulations presume that a child's new school will request records from the old one. However, parents and advocates report that special education records often do not get transferred. If schools fail to request the records, it falls on parents to ask for them.

Safiyah's birth mother received no instructions, and the girl's records stayed in Harlem. In East New York, the new school put her into a special education class, but without customized language instruction, and Safiyah did not receive a new evaluation.

As she moved into second and then third grade, Safiyah barely achieved the skills of a first grader. Her older brother George was doing poorly too—in his behavior as well as academically. He bit a teacher, and his conduct at home was little better; Lindsey eventually requested to have him put into another foster home. (He's now living with his biological father.) Once George was gone, Safiyah started acting out in class, just like her brother had. Her behavior got so out of hand that the school relocated Safiyah to another special education class.

It was only on a "siblings' day" at their foster care agency, Graham-Windham, that their parents, birth and foster, started putting the pieces together. "You know, George doesn't know

how to read," his mother, Crystal Howell, told Lindsey. And Lindsey informed Howell: "I think Safiyah doesn't, either."

Lindsey had been a foster parent with Graham-Windham for 13 years, and she'd cared for more than one child in special education. But Safiyah's needs stumped her. She tried to find a better situation for the girl. "I did everything I could to get her into a better class so she could learn better," she says. Lindsey inquired at the school around the corner from her home about a transfer there so Safiyah would stop getting into trouble on the school bus, but, "they said they didn't have a special ed class." Safiyah's caseworker, meanwhile, had visited the East New York school to talk to her teacher about getting help. Without a sense of what to do next, the caseworker contacted Erika Palmer, an attorney with Project Achieve.

Palmer first arranged for Lindsey to take Safiyah to Kings County Hospital to get a new evaluation. The psychologist recommended several possible methods for teaching Safiyah to read. With Palmer's guidance, Howell then asked the school district to provide one of those methods. Under federal law, the city Department of Education had to accommodate her somehow.

In some neighborhoods, the Department of Education offers one of those methods, but in Safiyah's district not a single school provided it. Palmer proceeded to file for a legal hearing and was able to reach a settlement with the city: The city and state would pay for Safiyah to go to a private school in Yonkers. Howell could be confident the school would help her daughter: George was already attending it, thanks to Palmer's intervention.

Today, Safiyah is marking two milestones in her young life: She has joined her brother at the private school, and, as soon as Howell secures a bigger apartment, she will be returning home to live with her mother. ♦ —ALYSSA KATZ

committees sometimes turn to the foster parent to sign off on decisions even if a birth parent is available. A recent change to federal law gives school districts that option. Until late in 2006, foster parents could step in only if the school district had made reasonable efforts to locate birth parents and a judge had put the foster parent in charge of education. The new regulations may help some children in foster care get special education services more quickly, but some advocates worry that foster parents will be brought in too readily in place of birth parents. Most foster children are on track to end up back home with their parents, and committees and the schools should make every effort to include them in the process, says Alvarez. “We fear that without proper understanding of the law, agencies will use foster parents as decisionmakers when biological parents are available,” she says.

A parent who disputes the committee’s recommendations can also file a lawsuit against the Department of Education. New York City has a high number of these cases—nearly 4,800 last year. By comparison, Chicago had fewer than 200. About half to two-thirds of the cases, according to the Department of Education and hearing officers, seek permission and payment for children to attend private schools. But few foster care agencies are equipped to pursue these lawsuits.

RATHER THAN INITIATE LITIGATION, THE NEW ACS special education unit has resolved its cases by working within the public school bureaucracy and with nonprofit foster care agencies. Its staff aims to equip the agencies as well as ACS casework staff, parents and foster parents to navigate the special education system. The unit provides training sessions on request. It also operates a consulting service to help parents and caseworkers, whether in preventive or foster care, make sense of evaluations and education plans, and to help strategize in preparation for CSE meetings.

Meanwhile, two ACS attorneys and three social workers at the agency’s field office on the Grand Concourse take on the tough situations that caseworkers have not been able to resolve on their own. A third attorney works out of the offices of the Jewish Child Care Association, his salary funded through private grants. The staff works directly with foster care caseworkers and families and helps them advocate for children at the schools and in special education review meetings. They don’t just evaluate how children are doing at school—they accompany parents on school visits to help them choose the best placement.

The team also aims to help educate caseworkers and parents about solutions they may not know about and to think and act like advocates. For instance, they can request vouchers to receive private therapy services when children cannot get them through their public school’s list of providers. “If a child is supposed to be receiving services,” says Katherine Locker, “you push those through the system. They’re entitled to those services, and you need to know what to ask for.”

Locker knows the terrain well. In 2001, she founded Legal Aid’s Education Advocacy Project. When Legal Aid’s Ron

Richter took over the ACS Legal Services Division last year, he brought Locker and Nellis Kim with him.

Locker and Kim, the unit’s social work director, work under some constraints. While ACS attorneys can help answer caseworker and parent questions and help them plan, they cannot provide legal advice to parents because ACS and the parents are opposing parties in court proceedings. They don’t directly handle preventive service cases, nor do they follow up with children after they are discharged from foster care. And the unit relies on caseworkers to bring problems to its attention. “We’re not screening every single child who’s receiving special ed services, or early intervention services for that matter,” Locker explains.

ACS may also need to do more to promote the service. On behalf of *Child Welfare Watch*, the Council of Family and Child Caring Agencies (COFCCA) asked foster care and preventive service program directors at its member agencies to describe their procedures for ensuring children receive educational services. Of the more than 20 who responded, only half said they had heard of the new ACS unit.

JUST ONE IN FOUR FOSTER CARE AND preventive agencies under contract with ACS have education specialists who provide advice and assistance to caseworkers and handle school visits and transfers, according to COFCCA. But that number appears to be growing. At Project Achieve, Alvarez and Palmer have noticed more agencies adding education coordinator positions, and they have begun holding monthly forums for them at Graham-Windham.

Such advocacy efforts can also promote parent involvement. At New Alternatives for Children, Eric Sweeting’s staff of four education advocates trains parents in how to supervise their children’s education and makes sure that parents attend special education reviews—whatever it takes. “We pick them up and bring them,” says Sweeting. “We go to their house in the morning with a car and drive them.” They routinely walk parents through every stage of selecting and obtaining services, and that, he says, is often what it takes to get parents fully engaged.

Parents, after all, can be the adults most committed to ensuring that children get the educational services they need. At Graham-Windham and Forestdale, foster parents also play a critical role. Foster mother Inez Lindsey is helping Crystal Howell prepare to take over her 10-year-old daughter Safiyah McLean’s education plans (see sidebar, page 11). When those plans come up for review, Lindsey and Howell both receive notices from the Department of Education. Whoever gets the letter first calls the other to start planning. If Howell can’t make it to Brooklyn for a meeting, she gives Lindsay permission to sign decisions on her behalf. Whenever possible, they attend meetings together.

Howell appreciates the extra encouragement Lindsey brings her. “It helps to have someone there,” says Howell. “I know I have support.” With guidance from Palmer and their caseworker, Howell and Lindsey can keep on top of Safiyah’s education on their own.

“Without the teamwork,” says Lindsey, “I don’t know how it would go.” ♦ —ALYSSA KATZ

MORE THAN AN OUNCE FOR PREVENTION

City funding for preventive family support services is up nearly 60 percent since 2005. Will it last?

Elizabeth Croban knows that for a family in crisis, it's often the small things that make the critical difference: a couch for the living room, sheets for the bed, help with the rent.

Until recently, Croban, director of preventive family support services at Catholic Guardian Society Home Bureau in the Bronx, had a tough time coming up with that type of assistance. "We would pull from our regular budget for things like furniture or to help people who were getting thrown out of their apartment," she says. "It's hard. We have families who don't have anything."

Then, last year, the Guardian Society got a special \$90,000 grant from the city's Administration for Children's Services (ACS) to bolster its day-to-day work with families. Croban's organization was among several nonprofit agencies operating at full capacity that received special unrestricted grants totaling a combined \$18 million in 2006 and 2007.

More than 70 agencies citywide are under contract with ACS to provide support services to families at risk of losing children to foster care. They have long operated on tight budgets, with modest salaries, unrelenting staff turnover and high caseloads. For seven years beginning in 1998, funding for these agencies not only didn't increase, it didn't even keep up with inflation (see "Colliding With Reality," *Child Welfare Watch* 10, page 20).

But beginning with the 2005-2006 fiscal year, the Bloomberg administration began to shift money saved from the shrinking foster care system into family support services. From 2005 to 2007, ACS' annual preventive care budget has grown from \$118.5 million to \$187.9 million—a 59 percent jump.

In addition to the unrestricted grants, new funds include \$18 million to support aftercare for families of children leaving foster care; \$9 million for specialized programs targeting families

with infants born with drugs in their system and others with teens at high risk of entering foster care; another \$6 million for other adolescent services; and a new \$11.5 million initiative to create family-based alternatives to foster care placements for youth charged as juvenile delinquents. This latter effort aims to reduce the number of young people remanded to institutional placements with the Department of Juvenile Justice and the state's Office of Children and Family Services.

THE UNRESTRICTED FUNDS, IN PARTICULAR, are a welcome change from years of scarcity. Some agencies have used new grants for short-term help for families, such as buying school supplies and clothing and paying back rent. Others have hired new case aides and therapists, increased salaries, created new support groups and internship programs for teens, and expanded staff training programs.

"It's a tremendous thing," says Laura Fernandez, who runs the Incarcerated Mothers Program at Edwin Gould Services for Children and Families, which used its enhancement money to hire a family therapy consultant. "It lets us be more creative in looking at how to help our communities."

The new funding has not yet led to an increase in the number of families receiving services. Since 2003, at any given time, the number of families engaged in preventive services at nonprofit agencies funded by ACS has been steady at about 11,600.

Child welfare officials say slightly more than 20 percent of today's overall preventive services budget comes from savings realized by reducing the number of young people living in foster care group homes and residential treatment, and putting more older youth in family settings with foster parents. Those funds are then reinvested in family support programs.

"Our budget initiatives broadly are not just a major increase in prevention, but in preventive supports and supports to strengthen foster families," says Dawn Saffayeh, senior advisor for resource management at ACS. "We want a continuum of services that kids and families can access." ACS has also been party to negotiations with state and federal officials to expand Medicaid services for city youth in foster care.

Still, many preventive agency leaders worry that the reinvestment strategy isn't sustainable, especially considering the demands on the system in the wake of the Nixzmary Brown murder one year ago and the huge increase in reports of abuse

ACS' ANNUAL PREVENTIVE CARE BUDGET HAS GROWN FROM \$118.5 MILLION TO \$187.9 MILLION—A 59 PERCENT JUMP.

and neglect that followed.

“When it’s a reinvestment enhancement, it’s vulnerable,” says Norma Martin, assistant executive director of the Brooklyn Bureau of Community Service. “It’s vulnerable to competing with other important needs and downturns in the economy.”

ACS SPENDS FAR LESS ON PREVENTIVE CARE

than foster care—just 7 percent of its overall \$2.47 billion budget in 2007 went to preventive services, compared with 22 percent for foster care. And with recent added funds for preventive services tied to the reduced use of foster care group homes, agency leaders worry that if placements should increase, new money for family support programs could disappear.

“It’s no way to build the system,” says Sister Paulette LoMonaco, executive director of Good Shepherd Services, which provides services to families in Brooklyn, the Bronx and Manhattan. “All we need is one more bad [child abuse] story. That’s what you live with in this business. The best thing that could happen in January when they do a new budget is that more money will be baselined for prevention.”

ACS officials counter that they fully intend to maintain current

funding levels for existing prevention programs. “Even if the foster care census stays the same or goes up, we can continue this funding,” says Saffayeh, because of the continued push to house more young people with foster parents, and fewer in group care.

For Queens resident Valerie Hardy, the family support services she received from her local agency, mercyFirst, helped her hold onto hope during a difficult time. When Hardy recently ended a period of homelessness and moved into a two-bedroom apartment in St. Albans with four of her nine children, mercyFirst bought furniture and arranged for counseling for one of her daughters, who’d been running away.

“As a single parent, you get overwhelmed,” says Hardy, 45, who used to run a daycare center in her home before domestic violence and health problems closed down her options. “They see what you need and try to get you straightened out. And they give emotional support by working with you one on one.”

Hardy would like to see the city provide even bigger increases for agencies like mercyFirst. “I think community people should try to work together with these agencies,” she says. “And I hope they can get more grants to be able to help more families because on every corner, in every house, there’s an issue.” ♦

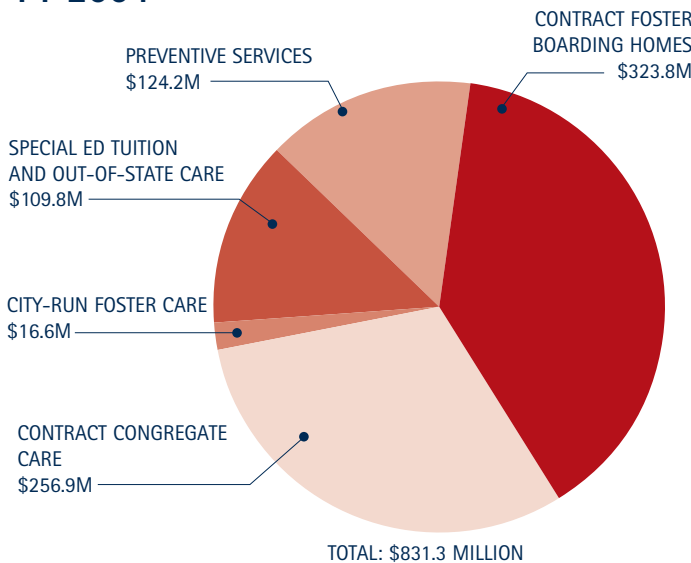
—BARBARA SOLOW

FOLLOW THE MONEY: THE CHILD WELFARE BUDGET

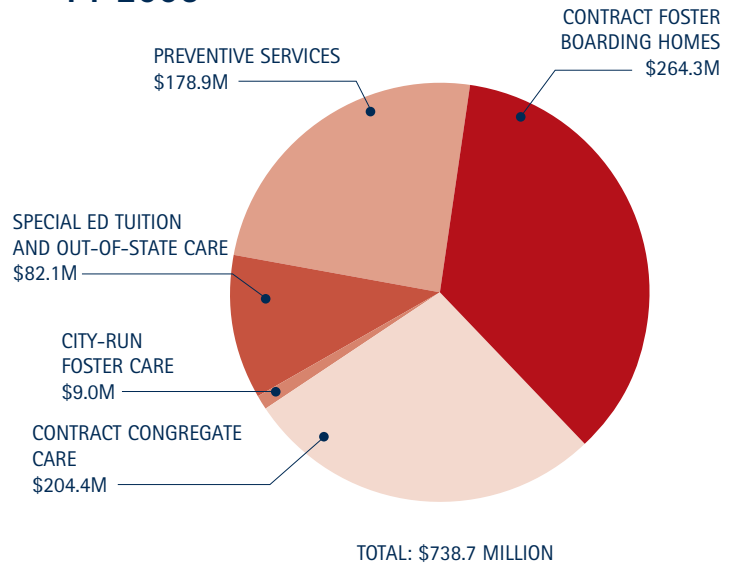
These charts illustrate the shifting proportion of funding that ACS allocates to nonprofit foster care and preventive family support agencies and related services. On the left is the non-personnel budget for foster care and preventive services in Fiscal Year 2004. On the right is the same budget two years later.

During this period, this part of the city’s budget shrank by \$92.6 million, reflecting a steep decline in the use of foster care programs and congregate foster care facilities. At the same time, however, ACS put in place an unprecedented \$54.7 million increase in funding for preventive services.

FY 2004*



FY 2006



Source: NYC Administration for Children’s Services. Fiscal year runs from July 1 to June 30.

*All figures are in adjusted 2005 dollars.

FOREVER FAMILY, NO REGRETS

Adoption laws can force a break in family ties that some children don't want to lose. There are alternatives.

Natasha Santos desperately wanted her foster mother to adopt her. The day they went before a judge and legally became mother and daughter, she was thrilled. The adoption made her feel accepted and wanted, safe and secure. At 15, after six years in foster care, she finally had a mother again.

But three years later, Natasha, who lives in Brownsville, is no longer so sure the adoption was a good idea. While she gained a permanent family, she lost the legal connection to her birth family, something she often wishes she still had. After her adoption, Natasha received a new birth certificate that included no mention of her biological mother. She stopped regularly seeing some of her siblings when the adoption put an end to mandated visits with them, something she could depend on as a foster child.

She also lost access to services she had taken for granted. When Natasha became depressed a year after the adoption, following her biological mother's death, she barely went to school for more than a year. Her adoptive mom could no longer ask for help from the social workers or therapists affiliated with Natasha's former foster care agency. Eventually, Natasha found counseling on her own.

As she began thinking about college, she realized she was no longer eligible for the higher education benefits to which foster children are entitled. She could not get waivers for expensive college application fees, nor could she apply for federal education grants available to youth in foster care or go on her former agency's college tour.

"If I had known then what I know now, I wouldn't have done it," Natasha says.

FRONTLINE STAFF AT FOSTER CARE AND

adoption agencies have often mixed together foster teens' practical concerns about adoption with the various emotional issues they confront, such as the fear of rejection or of not being worthy of a new family's love, says Barry Chaffkin, founder of Changing the World One Child at a Time, an organization that helps teens build lasting relationships with trustworthy adults.

But there's no denying adoption comes with clear financial and emotional drawbacks. Like Natasha, many teens in foster care want to establish a permanent connection to a new family without feeling torn from their lifelong relationships with parents, brothers, sisters and relatives.

In recent years, research has shown that foster teens are more

likely to enjoy stable adult lives—and less likely to become homeless, incarcerated, unemployed or depressed—if they build strong and lasting relationships with reliable adults while they are still young (see "Changing the Rules," *Child Welfare Watch* 10, Winter 2004–2005). As a result, policymakers nationwide—not least at the New York City Administration for Children's Services—have intensified their efforts to link teens with potential adoptive parents. Indeed, in New York City alone, more than 400 children aged 13 and older are adopted out of foster care each year.

Yet many adoption experts say that state laws that govern adoption, written originally to protect the interests of families adopting infants, have not kept pace with the changing times.

For an infant moving from foster care to adoption, it makes sense for state law to downplay the biological connections a child had prior to adoption, says Madelyn Freundlich, a child welfare consultant with Excal Consulting Partners and an expert in adoption law. For a 14-year-old girl with siblings still in foster care, two birth parents and an extended family, the forced break can do more harm than good. When foster children are adopted, they lose access to their foster care records and original birth certificates. They become legally unrelated to all of their biological family and lose the right to visit with siblings in foster care.

"Particularly in terms of sibling contact we have a long way to go legally," Freundlich says. Although many adoptive parents do help their children stay in touch with birth family, few states guarantee foster youth the legal right to continue to see their adopted siblings or even to petition for visits before age 18.

Many foster teens simply choose not to pursue adoption at all, says Susan Livingston Smith, program director at the Evan B. Donaldson Adoption Institute, a New York-based research and policy organization. Some ask not to meet with potential adoptive families; others move in with stable families but don't go through with the legal process of adoption. (In New York, teens who are 14 or older can decide themselves whether to accept or reject adoption.)

"Adoption as the only kind of permanency can be a barrier because youth don't want to lose connections to siblings, parents, grandparents," adds Livingston Smith. "Most birth parents are not a danger to the child. Most have issues that keep them from being consistently responsible for their children, and most children gravitate back to their birth parents anyway.

Coming up with permanency arrangements that allow youth to maintain connections for older youth is desirable.”

This can be equally important to children who enter foster care well before they are teens, she explains. “My hope would be it would trickle down to younger youth who have significant attachments that there’s no reason to lose.”

Many of adoption’s champions have decided that, while youth in foster care desperately need permanent connections to loving families, adoption law is not a great fit with their lives. Pat O’Brien, director of You Gotta Believe!, an agency that finds and trains families interested in having older foster teens move in with them, says he works with families to commit to teens, whether they go through with an adoption or not. “I got so frustrated at the stupid legal system. I’m not looking for them to be or not be legally adopted,” he says. “If it’s a legal adoption, great. But if not, it’s just about whether you’re in the family forever.”

THIS YEAR AND LAST, THE FEDERAL CHILDREN’S

Bureau, part of the Department of Health and Human Services, has funded a handful of pilot projects that seek to make adoption more amenable to older foster children, either by guaranteeing contact with their birth family or by institutionalizing other kinds of permanency options such as subsidized guardianships or other creative custody arrangements.

Nine organizations nationwide have federal grants to create five-year demonstration projects that help foster youth maintain connections to their birth relatives after adoption. The recipients included two organizations in New York, the Council on Adoptable Children and You Gotta Believe!, both of which also have contracts with the city’s Administration for Children’s Services. These programs provide adoption counseling to teens to help them think through complicated emotional questions about life after adoption and what they hope for in terms of ongoing contact with their birth family. They also insist that adoptive families be open to coping with the many difficulties that can result from trying to maintain birth family ties.

Children’s advocates have convinced legislatures in other states to go further, actually changing adoption laws so that young people, birth families and adoptive families can come up with more comprehensive and legally binding ways to retain their connections.

About 22 states have open adoption laws, meaning that the courts create legally enforceable post-adoption contact agreements that can cover both sibling visits and birth family contact. In some states, post-adoption contact agreements simply define visitation. Other states have broader open adoption laws allowing birth families to choose the connection they want along a continuum, from allowing the child simply to know who the birth parent is, to agreeing to letters, photos or phone contact, to having visits on a schedule. While adoptive parents in New

York can make those arrangements informally, court-enforced open adoption cements the agreement. That can make foster youth and their birth families more comfortable in choosing adoption.

In 2006, the New York State legislature allowed birth parents who voluntarily surrender a child to make a legally enforceable post-adoption contact agreement with the adoptive parents. This had long been informally done in the private adoption of infants, explains Maris Blechner, director of Family Focus Adoption Services in Queens, even though the agreements were not legally enforceable. “We’ve always asked birth parents, ‘What do you want? To talk on the phone, or get a picture every year? We try to find the least painful of many different choices. Now it’s a more formal way for birth parents to try to protect themselves.’”

Judith Ashton, executive director of the state Citizens Coalition for Children, says that ideally when prospective adoptive parents go into adoption, they should know there is an enforceable agreement made with the birth parent at the time of surrender. But she draws a distinction between conditional surrender and true open adoption, which typically allows a spectrum of options for continued contact, from occasional letters to frequent visits.

To guide birth and adoptive families toward contact agreements that make sense, Ashton believes foster care systems should require mediation involving the birth and adoptive families before any post-adoption contact agreement is made. “The human aspects are best dealt with outside a courtroom. Mediation is a place for people’s fears, wishes, desires and worries to come out, unlike in court where there’s a winner and a loser,” she says.

This is the route Massachusetts decided to take after creating court-enforceable open adoption laws in 1995. State officials decided negotiations between attorneys in court were not necessarily the best way to legally bind together birth and adoptive families. Instead, the state created mediation among the parents to help them resolve their cases without trial. “Typically, termination and adoption agreements are decisions made on the courthouse steps before you walk into the room and are negotiated by attorneys. In mediation, the people who live with the agreement make the agreement,” says Julia Pearson, program director of the mediation agency Massachusetts Families for Kids. “If it’s unrealistic for a child to go home, the parent is empowered to make the decision about where their child will grow up, as opposed to [the state] saying, ‘You have no choice.’ It just feels a lot better.”

The state offers parents the mediation option whether the goal for their child is to return to family or to live with a guardian or adoptive family. Unlike discussions with caseworkers, conversations with mediators are confidential and cannot be discussed in court, and anytime the parent chooses to stop mediation and simply go through with a court

OUT OF TOUCH

Vanessa Maldonado, 18, had to fight just to say goodbye to her two younger sisters after they were adopted two years ago. For years Vanessa tried to protect her sisters from her mother's drug addiction. She cooked for them, did their hair and took them to school. When the city placed the girls together in a foster home, Vanessa did not get along with their foster mom and ended up moving out. For years, though, she continued visiting her sisters regularly.

"During our early visits, Samantha and Tiffany hung on my every word," Vanessa wrote in *Represent!*, a magazine by and for foster care youth. "I would make up fairy tales about perfect families who loved each other and had super powers like reading really fast. I loved their facial expressions when something happened to the character... I loved how they hugged me when the story ended. They weren't old enough to understand why we were put in care, so I stuck to entertaining them."

Over time, Vanessa saw her sisters less and less often. Their foster mother didn't always bring them to visits. Meanwhile, Vanessa was diagnosed with bipolar disorder and was in and out of hospitals. Their last visit took place when she was 18 and they came to see her in the hospital. Samantha was more affectionate than usual, and Tiffany cried. A few months later, Vanessa learned they'd been adopted and the adoptive mom "asked that any further visitation with the biological family be cancelled," according to her case records.

Vanessa sobbed for hours. Then she contacted her lawyer and petitioned the judge to let her see her sisters again. He granted her three visits so they could say goodbye. Vanessa is still determined to stay in touch. "I'm going to slip them my information when I see them so they can always find me," she says. ♦

—NORA MCCARTHY

case, he or she can do so. "Some of the parents won't speak to their worker, they feel betrayed, angry, there's trust issues, and the Department of Social Services is just not seen as neutral. If a parent says she doesn't feel she can parent full time, DSS is obligated to write that down, while I don't have to," Pearson says. "We're not going to advocate or tell anyone what to do. We're here to help you make a decision, one you feel good about."

In many cases, parents choose mediation at the time when their child's goal has changed to adoption. Then they begin a three- to five-month process involving the birth and adoptive parents, who come to an agreement regarding whom the child lives with and the contact they'll continue to have.

OPEN ADOPTION AGREEMENTS TYPICALLY

protect relationships with birth parents. But sibling contact can be an even bigger issue for foster youth who may not be in contact with their parents. Two states, Louisiana and Oregon, have passed laws giving adopted foster youth the right to maintain sibling contact. "Many agencies counsel and advise families from the beginning that [sibling contact] is very important, vital to a child's sense of well-being. And defining the contact agreement is a way to work through resistance," says foster care consultant Freundlich.

Native American communities have gone even further toward protecting relationships with birth parents and relatives. Under tribal law, foster children can be adopted through a process called "customary adoption." It allows young people to be adopted without their parents losing their parental rights. The adopted family simply becomes a second set of parents and is awarded custody, much the same as after a divorce; one set of parents may have custody and the other set has a visitation agreement. If the birth parents become able to take care of their children later on, they can ask for joint custody with the adoptive parents or for the child to return home.

"Customary adoption is a way of keeping the connection with family going, and honoring that people can and do change," says Jodi Davis, community development specialist for the National Indian Child Welfare Association in Portland, Oregon, which provides technical assistance to tribal governments and state agencies.

Another, similar alternative to adoption is subsidized guardianship, which allows families to become legal guardians while also receiving government support to raise the children. This is very different from foster care because it gives legal control of key decisions to the guardian, and while it does not exist in New York State, more than 30 other states have implemented it in one form or another.

Currently in New York, any family can petition the court to become a child's legal guardian, and if this is awarded, the guardian has legal authority to make medical and school decisions as if he or she were the child's parent. But the legal guardian will not receive any special government support. For grandparents, aunts or uncles who can afford to care for an additional child, this is often the preferred way of taking in grandchildren or nieces or nephews.

Family members who cannot afford to take on the expenses of additional children must instead become kinship foster parents in order to receive government assistance. However, kinship foster parents do not have the legal right to permanently raise the child. The official custodian, as with any foster child, is the government—in New York City, that's the commissioner of the Administration for Children's Services. Kinship foster parents must have regular visits with caseworkers, and they must allow child welfare authorities to make critical school and medical decisions.

Relatives can move to adopt, but that can be awkward, says Madeleine Kurtz, an attorney who represents parents. Many relatives don't want to push foster care agencies toward terminating the birth parents' rights, she explains, because they don't want to send a message to their own daughter or sister that they've given up on them. And they don't want to appear to be snatching a child away for good.

"Adoption might not be reflective of what the family would want or feel comfortable with," Kurtz says. In 34 states—but not New York—families can apply for subsidized guardianship so that children in their care have the permanency and the legal rights that come with adoption, without terminating the parents' rights.

Since 2000, the federal government has allowed states to apply for waivers to shift foster care funding to subsidized guardianship demonstration programs for youth in care. Nine states have created these programs. However, the federal waiver remains in place for just five years, and the support payments for guardians typically last until a child is 18—so the states have had to agree to continue providing subsidies while drawing them from other funding sources. Several states use federal welfare grants for the program, but that means only very low-income families qualify.

Many states were concerned about creating a right to subsidized guardianships because so many thousands of children live with family members other than their parents, and a small handful of states, including Florida, have done exactly that.

In New York, the strategy would create permanent homes for children who are now in kinship care, but the overall expense could be enormous. So far, the state has chosen not to follow this route. "While people generally support the idea in principle, in

practice, it's too costly for the state without the ability to draw federal dollars," Ashton says. Nonetheless, the Parent Advisory Workgroup, a committee of parent advocates, recently met with city officials to discuss lobbying the state legislature for a subsidized guardianship law.

The states that created demonstration projects were required to collect data on subsidized guardianships to track whether they provided more permanent arrangements than long-term foster care. "Guardianships are still pretty new, but they look like a good alternative, particularly for kin," says Livingston Smith, who co-authored a recent study published in the *Journal of Social Service Research* that compared disruption rates in guardianship families with families receiving adoption preservation services. The study found no significant difference.

SO FAR, NEW YORK HAS NEITHER AN OPEN

adoption law that would allow birth families to have continued contact with adopted children, nor legally enforceable post-adoption contact agreements for siblings, as many young people discover only after it is too late (see "Out of Touch," page 17).

But advocates say the system is moving in the direction of creating open adoptions—whether they are legally binding or not. And the new state law allowing for court-negotiated conditional surrender agreements is one important step forward.

"For now, legally, adoption is closed," says Barbara Rincon, project director at the Coalition on Adoptable Children. "But if a family is really there for a child, they'll talk freely and positively about the birth parent and help the child maintain the relationship. In the hearts and minds, it's open. It's like you have to work your way around the law." ♦ —**NORA MCCARTHY**

RESOURCES AND RESEARCH

ON SPECIAL EDUCATION, ADOPTION AND DISABILITIES

REPORTS FROM NONPROFIT POLICY and ADVOCACY ORGANIZATIONS:

Advocates for Children of New York

www.advocatesforchildren.org

"Advocates for Children's Project Achieve: A Model Project Providing Education Advocacy for Children in the Child Welfare System," March 2005. "Educational Neglect: The Delivery of Educational Services to Children in New York City's Foster Care System," July 2000.

InterAgency Council of Mental Retardation and Developmental Disabilities Agencies, www.iacny.org

"Recommendations for an Operational Interface Between NYS/OMRDD and NYC/ACS," 2006. Copies available from IAC, 275 Seventh Ave., New York, NY 10001

Resources for Children with Special Needs, www.resourcesnyc.org

Romero, Roberto, "Barriers to an Appropriate Education for Children With Disabilities and Other Special Needs in Foster Care and at Risk in New York City, as Identified Through the Center Without Walls: A Report to the Child Welfare Fund," July 2006.

REPORTS FROM RESEARCH AND GOVERNMENT ORGANIZATIONS:

Chapin Hall Center for Children, Chicago, IL, www.chapinhall.org

Courtney, Mark, et al., "The Educational Status of Foster Children," Issue Brief, December 2004.

New York City Department of Education, <http://schools.nyc.gov>

Hehir, Thomas, et al., "Comprehensive Management Review and Evaluation of Special Education," submitted to the city Department of Education, September 2005.

Vera Institute of Justice, www.vera.org

Conger, Dylan and Rebeck, Alison, "How Children's Foster Care Experiences Affect Their Education," December 2001.

IMPORTANT ARTICLES:

"A Comparison of Subsidized Guardianship and Child Welfare Adoptive Families Served by the Illinois Adoption and Guardianship Preservation Program," by Jeanne A. Howard and other contributors, *Journal of Social Service Research*, Vol. 32, Issue 3, July 26, 2006, pp. 123-134.

"Remembering the 'Individuals' of the Individuals With Disabilities Act," by Therese Craparo, *New York University Journal of Legislation and Public Policy*, Vol. 6, 2003, pp. 467-524.

WATCHING THE NUMBERS

A six-year statistical survey monitoring New York City's child welfare system

	FY '01	FY '02	FY '03	FY '04	FY '05	FY '06
Protective Services						
• REPORTS OF ABUSE AND NEGLECT	57,224	55,925	53,894	51,477	50,251	61,376
<i>An unprecedented increase in hotline reports followed the January 2006 murder of Nixzmary Brown and continued through the end of the fiscal year.</i>						
• PERCENTAGE OF REPORTS SUBSTANTIATED	34.1	33.6	33.6	33.7	32.6	35.6
<i>Indication rates began to increase significantly one month before the Nixzmary Brown incident. By June they were above 41 percent.</i>						
• PENDING RATE	6.9	5.4	5.2	5.9	6.1	7.5
<i>The monthly average of new cases per child protective worker reached as high as 10 in the spring of 2006.</i>						
• AVERAGE CHILD PROTECTIVE CASELOAD	13.2	11.6	11.2	12.1	12.1	16.6
<i>From February through June of 2006 caseloads increased to above 21, a level not seen since 1996.</i>						
• CHILD FATALITIES IN CASES KNOWN TO ACS (CALENDAR YEAR)	32	25	24	33	30	45
<i>This reflects the number of deaths in families involved with ACS at some time in the last 10 years.</i>						
Preventive Services						
• FAMILIES RECEIVING PREVENTIVE SERVICES (CUMULATIVE)	27,399	30,313	31,692	31,215	29,174	NA
• NEW FAMILIES RECEIVING PREVENTIVE SERVICES (ACTIVE)	13,990	14,552	14,978	14,417	13,921	NA
• REFERRALS FROM ACS (%)	51	53	52	50	49	52
Foster Care Services						
• NUMBER OF CHILDREN ADMITTED TO FOSTER CARE	7,908	8,498	6,901	6,201	4,813	6,285
<i>The number of children placed in care increased in the months after the Nixzmary Brown murder.</i>						
• NUMBER OF CHILDREN DISCHARGED FROM FOSTER CARE	12,072	10,538	9,594	8,854	7,907	6,431
<i>Discharges slowed as the foster care system remains smaller than in the past.</i>						
• TOTAL AVERAGE FOSTER CARE POPULATION	30,858	28,215	25,701	22,082	18,968	16,706
<i>Even with an increase in placements, the average annual foster care census was 12% lower than last year.</i>						
• MEDIAN LENGTH OF STAY FOR CHILDREN BEFORE RETURN TO PARENTS (MONTHS)	5.9	6.9	6.8	7.6	8.2	10.3
<i>Median length of stay increased by 20% for children entering foster care for the first time.</i>						
• PERCENTAGE OF CHILDREN WITH REUNIFICATION GOAL (PREVIOUS CALENDAR YEAR)	47.4	46.3	43.8	44.0	44.3	45.5
• PERCENTAGE OF SEPARATED SIBLINGS (PREVIOUS CALENDAR YEAR)	52.1	51.6	52.4	51.4	50.7	49.3
<i>The sibling separation rate continues a very slow decline.</i>						
• RECIDIVISM RATE (%) (PREVIOUS CALENDAR YEAR)	12.1	13.8	13.6	12.8	13.6	11.5
<i>The number of children who return to care within two years of discharge declined.</i>						
• PERCENTAGE OF FOSTER CHILDREN IN KINSHIP CARE	26.2	25.7	26.1	26	24.6	24.3
• PERCENTAGE OF CHILDREN PLACED WITH CONTRACT AGENCIES	88.3	90.4	92	94.5	95.2	97.2
<i>A very small number of foster children remain in city-managed foster homes.</i>						
• PERCENTAGE OF FOSTER BOARDING HOME PLACEMENTS IN BOROUGH OF ORIGIN	57.5	64.6	74.9	72.0	76.0	72.8
• PERCENTAGE OF FOSTER BOARDING HOME PLACEMENTS IN COMMUNITY DISTRICT	13.7	18.2	22.1	23.0	21.1	17.3
<i>This rate dropped several percentage points as placements increased.</i>						
Adoption Services						
• PERCENTAGE OF CHILDREN WITH ADOPTION AS A GOAL (PREVIOUS CALENDAR YEAR)	38.6	40.3	39.4	38.8	39.8	38.0
<i>The percentage of children with this permanency goal remains fairly constant.</i>						
• NUMBER OF FINALIZED ADOPTIONS	2,715	2,694	2,849	2,735	2,364	1,831
<i>Finalized adoptions have declined by more than 35% since FY2003.</i>						
• AVERAGE TIME TO COMPLETE ADOPTIONS (YEARS)	3.5	3.6	3.6	3.5	3.4	3.5

All numbers above reported in NYC fiscal years unless otherwise indicated.

Sources: NYC Mayor's Management Reports, New York State Office of Children and Family Services Monitoring and Analysis Profiles, NYC Administration for Children's Services Updates

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