

FOSTER EDUCATION PROGRAM:

UC Berkeley School of Law

HALEY FAGAN* & TORI PORELL**

FOSTERING EDUCATIONAL SUCCESS AND PUBLIC INTEREST CAREERS

What's the problem?

BB is a nine-year-old African American girl. She and her younger siblings were recently removed from their parents' care after years of physical abuse and witnessing significant intimate partner violence in the home. BB is now living in a foster home and has been enrolled

This article is part of the special section, "Legal History in the Making: Innovative Experiential Learning Programs in California Law Schools," in *California Legal History*, vol. 17, 2022 (see editor's introduction on page 3).

* Haley Fagan is Director of the Education Advocacy Program at East Bay Children's Law Offices, a non-profit law firm providing court appointed, holistic legal representation to children in Alameda County's juvenile dependency system. More information is available at <https://www.ebclo.org>.

** Tori Porell is a Youth Justice Attorney at Bay Area Legal Aid, where the Youth Justice Team engages in civil legal representation, social work, community collaborations, and systematic advocacy, in partnership with the young people they serve. They provide civil legal services to young people from the ages 13 to 26 to prevent entry or re-entry to the criminal legal system. More information is available at <https://baylegal.org/what-we-do/our-clients/youth-justice>.

*in school for the first time in her life. School has not been going well. BB is not accustomed to being separated from her younger siblings, for whom she feels a sense of responsibility. She is routinely leaving her classroom in search of her siblings to make sure they are safe. In addition, the years of complex trauma BB has endured are translating into aggressive behaviors with adults and her school peers as well as extreme difficulty in regulating her emotions on campus. Concerned about BB's propensity to leave school grounds and the aggression with which she responds to staff attempts at intervention, school administrators have now resorted to calling in armed, uniformed police officers to chase BB through her elementary school campus in an attempt to contain her.*¹

Unfortunately, BB is not alone. For myriad reasons, youth in foster care have exceedingly poor educational outcomes. A 2013 report sponsored by the Stuart Foundation confirmed what foster youth advocates have witnessed for years — that California's foster youth are a uniquely at-risk student subgroup in California schools.² Foster youth change schools far more often than their peers; are twice as likely as their peers to test below grade level in English and math; are twice as likely to be identified as having a disability and five times more likely to be classified as having an “emotional disturbance”; and are consistently suspended at several times the statewide suspension rate.³ It should come as no surprise, then, that although the statewide high school graduation rate has hovered at around 84 percent for the last several years, California's foster youth have been graduating at the far lower rate of around 56 percent each year.⁴

¹ While the stories are true, all initials and identifying information of foster youth referenced in this article have been changed or omitted to maintain confidentiality.

² V. X. Barrat & B. Berliner, *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools* (San Francisco: WestEd, 2013), available at <https://www.wested.org/resources/the-invisible-achievement-gap-education-outcomes-of-students-in-foster-care-in-californias-public-schools-part-1>.

³ For example, during the 2020–21 pandemic school year, the statewide suspension rate was 0.2 percent, while the foster youth suspension rate for that year was 1.2 percent. The statewide suspension rate in 2019–20 was 2.5 percent, while the foster youth suspension rate for that year was 11.9 percent. Data available at <https://dq.cde.ca.gov/dataquest>.

⁴ Data available at <https://dq.cde.ca.gov/dataquest>.

Growing awareness of this problem has resulted in targeted legislation at both the state and federal levels. In 2003, California passed AB 490, declaring an intent that foster youth receive access to a meaningful education and laying a foundation for that success with a key set of student rights and school responsibilities. For example, AB 490 gave California foster youth the right to remain in their school of origin when facing a change in foster home placement, as well as a right to receive partial credits for courses begun but unable to be completed due to placement changes. It also created timelines for transfer of school records and reduced the burden of school enrollment requirements for youth in foster care. Similarly, in 2009, AB 167 introduced an option for qualifying foster youth to earn their high school diplomas by fulfilling California's basic state graduation requirements rather than the increased high school credit requirements of most local educational agencies.⁵

Despite these legislative efforts, real change in the life of any foster youth requires an adult who is paying attention and empowered to enforce the youth's educational rights. Many foster youth simply do not have an adult willing or able to take on that role. This is particularly true of youth with higher mental or behavioral health needs living in congregate care settings or facing placement instability. For these foster youth, the lack of a consistent educational rights holder can result in repeating coursework at each new school placement, spending months in the wrong grade level before anyone notices, or effectively losing a year of school due to repeated school placement changes.

THE “FOSTER ED” FIX

The Foster Education program, or “Foster Ed,” began in 2004 as an Equal Justice Works fellowship project of an alumna of UC Berkeley School of Law (Berkeley Law). Working alongside Protection & Advocacy, Inc. (since renamed Disability Rights California), and with support from The Morrison & Foerster Foundation, this Equal Justice Works Fellow and a group of Berkeley Law students developed a model for training up and pairing Berkeley Law students with foster youth in need of educational rights

⁵ For more information on the educational rights of California's foster youth, visit the California Foster Youth Education Task Force at <http://www.cfyetf.org>.

holders. In the years since the initial fellowship project, the Foster Ed program has been sustained through the efforts of law student leaders with supervision and training support from advocates at East Bay Children's Law Offices, National Center for Youth Law, Disability Rights Education & Defense Fund, Bay Area Legal Aid, and The Morrison & Foerster Foundation.

Every fall, a group of Foster Ed student leaders screens and selects a new class of prospective educational rights holders from the entering first year Berkeley Law class as a part of the Student-Initiated Legal Services Projects program.⁶ Participants are chosen based on their level of interest and prior experience working with youth. Past participants have included former teachers, Court Appointed Special Advocates (CASAs), coaches and camp counselors in addition to students with lived experience in the foster care system.

Once the new group has formed, attorneys and advocates from partnering organizations provide initial training. While the format of the training has varied over the years, it has always included an introduction to the juvenile dependency system and the rights and responsibilities of educational rights holders, as well as a primer on special education and school discipline law. Education laws specific to the foster youth population are covered in the initial training phase, including the school stability and high school graduation rights conferred by AB 490 and AB 167. Additional training offerings have covered topics like childhood trauma and mental health, maintaining professional boundaries, and working with transition aged youth. Participants have also heard directly from advocates with lived experience in the foster care system. Each Foster Ed participant signs a confidentiality agreement and is given a collection of written materials to assist in their advocacy during the course of the year. These materials include relevant legal reference documents, research and practical tools like checklists and sample school advocacy letters.

Following initial training, a supervising attorney from East Bay Children's Law Offices matches each of the Berkeley Law students with a foster youth in need of an educational rights holder. These are foster youth for whom there are no other adults previously known to the youth who are willing or able to take on the responsibility of holding educational rights.

⁶ <https://www.law.berkeley.edu/experiential/pro-bono-program/slps>.

Often, these are youth living in congregate care settings called Short Term Residential Treatment Programs (STRTPs) or with a history of unstable foster home placements for whom the foster care system has added trauma to pre-existing mental health concerns. A pairing may be made to address unmet special education needs on behalf of the youth, to provide trauma-informed advocacy around exclusionary school discipline practices, or to support a youth in efforts toward high school graduation, for example. Each participating Berkeley Law student is then formally appointed by the dependency court to serve as the educational rights holder for the foster youth with whom they are paired. Foster Ed participants are required to hold these educational rights for a minimum of one year, though many continue in this role throughout their law school careers.

As educational rights holders, Foster Ed students are charged with investigating the foster youth's educational needs, ensuring that their educational rights are being met, and that the foster youth's voice is heard in all education-related matters. Educational rights holders can meet with the youth and their teachers, observe in the classroom, and review student records. They are entitled to notification of school disciplinary matters and are vested with decision-making authority regarding all special education services and evaluations. In addition, educational rights holders can play a key role in the dependency court proceedings by providing critical updates on the status of the foster youth's educational needs. Educational rights holders are statutorily recognized as members of the youth's dependency "Child and Family Team" and therefore invited to all team meetings regarding possible changes in foster home placement.

The Foster Ed participants and supervisors convene on a monthly basis throughout the school year for additional training and case round discussions. East Bay Children's Law Offices attorneys regularly advocate alongside participants at key school meetings and strategize with participants in how best to promote a foster youth's educational success during their time in foster care. Participants also get the experience of collaborating with non-legal advocates, including social workers, education professionals, therapists and caregivers in working toward the foster youth's best interest. Most importantly, Foster Ed participants have the opportunity to give some measure of power back to the youth in foster care by amplifying their voices in school meetings and offering them support in reaching their goals.

A COMMUNITY OF MENTORS

Mentorship is a core feature of the structure, the goal, and the impact of the Foster Ed program. From its genesis, Foster Ed has been a student-led program receiving professional mentorship and supervision from legal practitioners for the purpose of providing educational mentorship and advocacy to youth in foster care. The lawyers mentor the law students on how to be effective public interest advocates in an imperfect system; the law student leaders mentor the first-year participants on how to be law students and educational rights holders; and the law student participants mentor foster youth on how to be successful students and self-advocates.

The student-led structure of the Foster Ed program as well as the role that participants play as educational rights holders promotes a unique form of mentoring partnership between participant and supervising attorney. In their role as an educational rights holder, it is the Foster Ed participant who holds decision-making authority while the supervising attorney's role is primarily advisory. Once the initial training phase is concluded, the participant and supervising attorney function as a team advocating together on behalf of the foster youth in educational matters.

As educational rights holders, Foster Ed participants get a front row seat to the structural barriers and system flaws facing the foster youth with whom they are paired. They have the opportunity to see how the basic building blocks of the legal system, which they spend much of their first-year law courses discussing, often fall short of the needs they were designed to meet. They also experience how impactful the role of the advocate can be in making the legal system work. Much of the professional mentoring focuses on how to navigate as an advocate in a broken system. Case round discussions among the group are frequently about how to find or create some good for the client under circumstances in which the system offers no good options.

Amelia was appointed to hold educational rights for foster youth JJ. JJ was an elementary school student receiving special education and mental health services at school. JJ's trauma history and resultant mental health needs had caused frequent disruptions to his home placement, in turn leading to a pattern of school changes. When yet another foster home placement fell through in the middle of the school year, JJ was moved to a home thirty-five miles away in a different

county and school district. While AB 490 clearly allowed for JJ to remain enrolled in his school of origin, it did not provide easy solutions for how JJ could be transported to and from that school every day. As a result, JJ's county child welfare worker advised his new caregiver to enroll him in yet another new school for the remainder of the school year. It was only through the efforts of Amelia, who had spent much of the school year building positive relationships with JJ's existing special education team, that JJ's school of origin agreed to transport him across county lines every day to maintain his school placement. Because of Amelia's advocacy, JJ was able to finish an entire school year in the same school for the first time in his elementary school career.

Foster Ed participants paired with older foster youth often play a critical mentorship role in the road toward that foster youth's high school graduation and persistence to higher education. Foster Ed participants have worked toward getting students into the high school classes they'll need to graduate or into the trauma-informed school environments in which they'll have the necessary support to meet their goals. They have advocated for appropriate special education assessment and services for foster youth in juvenile hall and ensured that foster youth had the necessary technology to participate in distance learning during the COVID-19 pandemic. Foster Ed participants have given college tours and even arranged for an interested foster youth to sit in on a Berkeley Law class.

Leila was appointed to hold educational rights for CC. CC had experienced significant trauma growing up and was homeless and without consistent adult support when she entered foster care. Despite these challenges, CC was on track to graduate and excelling in her coursework when COVID-19 hit. Amid all the changes brought about by distance learning, CC stopped receiving some of her special education accommodations in one of her classes. CC was fearful of causing trouble with her teacher, but the lack of accommodations was causing her increased anxiety as her grade was slipping. This was particularly troubling to CC as she had a goal of attending college. Because CC had already spent so much time talking with Leila about her goals and learning about Leila's own college experience, CC felt comfortable asking Leila to advocate on her behalf with the teacher to resolve the issue.

Not only was Leila able to successfully advocate for change at a contentious IEP meeting, but she utilized her prior experience working in her undergraduate school's admissions office to help CC through the college application process. CC successfully graduated from high school and received scholarships to her chosen four-year university.

The mentorship Foster Ed participants are able to offer often expands beyond assistance in gaining success in the classroom. In the spring of 2022, Foster Ed participants worked to create a “Know Your Rights” training specifically designed for youth in congregate care STRTPs. The presentation was meant to empower this population of foster youth who often have higher levels of mental and behavioral health needs but fewer permanent adult supports. The training covered a variety of rights including school discipline, cyber safety, interacting with police on the school campus, and options after high school. These Foster Ed participants then accompanied East Bay Children’s Law Offices staff to several STRTPs where they engaged the foster youth residents in discussion of these topics over donuts, pizza, and lots of laughter. This type of engagement can, and often does, lead to meaningful mentorship relationships that outlast the Foster Ed participant’s tenure as educational rights holder.

Nazeerah was appointed to hold educational rights for DD. DD entered the foster care system in her teenage years, after an early childhood full of caregiver disruptions and parental substance abuse. The complex trauma she had experienced in her home left her vulnerable to violent exploitation and self-medication through substance use. DD was also very smart, determined to get her high school diploma, and willing to reach out to Nazeerah when she needed help. Nazeerah became an ongoing support for DD, not just in ensuring her access to appropriate school supports, but also as DD worked to make positive changes in her life. DD continued to include Nazeerah as an important part of her support network even after DD turned 18 and became her own educational rights holder.

The impact of the work done in the Foster Ed program expands beyond the lives of the foster youth it was designed to serve. In the past, the entire Berkeley Law community has become involved as Foster Education leaders have held holiday gift drives collecting books and toys from the larger

Berkeley Law community for foster youth. One Foster Ed participant's recounting of his own experience in foster care as well as the work he was able to do as an educational rights holder inspired a Berkeley Law professor to volunteer as an educational rights holder. She now holds educational rights for an elementary school student with extreme mental health needs. In addition, many Foster Ed participants have continued their work on behalf of youth or in the public interest. Foster Ed participants have worked in Berkeley's Education Law Clinic with East Bay Community Law Center during their second and third years and pursued careers in education policy, youth law, disability rights advocacy and civil rights.

CREATING A CAREER FROM FOSTER ED

Tori was appointed to hold educational rights for GG. GG was only preschool aged, but his early childhood trauma had already made emotional regulation very difficult for him. Tori successfully advocated for GG to receive appropriate special education supports in his earliest school years. During this time, Tori was the most consistent adult figure in GG's life as his family struggled in the juvenile dependency system. She and her husband even prepared a Ninja Turtle themed bedroom in their home for GG in case he needed them to become his caregivers. During Tori's third year of law school, she and several of her Foster Education peers assisted East Bay Children's Law Offices in completing an informal audit of early intervention and developmental service provision to Alameda County foster youth ages zero to five. Assisted by the data collected in the audit, Tori designed an Equal Justice Works project to provide specialized legal representation to Alameda County's youngest foster youth as a Fellow at East Bay Children's Law Offices. She is now an attorney with Bay Area Legal Aid's Youth Justice Team and has rejoined the Foster Education group, this time as a supervising attorney.

Another aim of the Foster Ed project is to inspire and train the next generation of education and youth justice attorneys. Many students do not come into law school with an awareness of Youth Law, Education, or Dependency as avenues for their legal careers, making exposure to these fields a vital way to recruit new attorneys. Outside of formal internships and

summer employment, pro bono programs like Foster Ed allow students to dive deeply into an area of the law and build connections with attorneys and organizations in these fields.

Many law schools do not offer significant academic coursework in the substantive areas most relevant to students who will be pursuing careers in direct legal services, especially Youth Law and Dependency. Outside of clinical programs and externships, programs like Foster Ed provide a vital learning opportunity for students to gain the practical legal skills that they will use in their jobs representing low-income clients. Through not only their own work on a single case, but also the exposure to many similar cases through training and case rounds, students gain a strong conceptual and practical foundation in their desired field of law.

Students who have access to training and practice opportunities like Foster Ed, not only receive robust preparation for careers in public interest law and applicable practical skills, but through exposure to the realities of the profession, are better prepared to persist once they enter the workforce. Throughout the year in Foster Ed, students are not only practicing their written and oral advocacy skills and receiving training in substantive updates to the rights of foster youth, but they have the opportunity to engage in meaningful discussions about complex topics like vicarious trauma, compassion fatigue, and the racial disparities permeating the education and child welfare systems. Supervising attorneys, as well as student project leaders, are available to students to help navigate tricky questions related to boundaries, professional ethics, and the limitations of legal advocacy. It is much more difficult to learn these lessons in a classroom, yet these are some of the most vital things new attorneys must learn in order to do their jobs effectively and sustainably.

TORI'S EXPERIENCE

For me, the attraction to Foster Ed came from a previous career as an early childhood educator. I had no idea that working with youth as an attorney was an option and came to law school with my sights set on other fields. After trying out those other fields through summer jobs, however, I continued to gravitate more and more to working with Foster Ed, agreeing to be the group's student leader as a 2L. It was experience in Foster Ed that inspired me to pursue

additional experience in education law, and I supplemented what I had learned through my work with the student I was paired with in Berkeley Law's Education, Defense and Justice for Youth (EDJY) Clinic at the East Bay Community Law Center.

As law school drew to a close for me, it was clear that the original field of law I intended to pursue was not for me, and I was fully committed to youth law, having participated in Foster Ed for three years and externed at many Bay Area youth-serving legal organizations. In applying for a fellowship project, I leveraged my experience both in Foster Ed and in the EDJY Clinic, to fill a critical gap observed through both encounters. After defending high school students from expulsion and realizing that they had unmet special education needs that stretched back to elementary school, as well as struggling to advocate for a preschool-aged foster student to get badly needed services to begin his school career on an equal footing, the project I developed advocated a model of early intervention legal representation for foster youth ages zero to five with complex educational, mental health, and developmental needs.⁷

After beginning the Equal Justice Works Project at the East Bay Children's Law Offices, I was able to hit the ground running, due to my significant exposure to dependency and experience with special education advocacy. I quickly developed an expertise in the needs of young foster children and the strategies that lawyers could use to meet them. My work was published by the American Bar Association's Children's Rights Litigation Committee⁸ and presented at the National Association of Counsel for Children's annual conference.⁹ This work was tremendously valuable in elevating East Bay Children's Law Office's practice in meeting the needs of their youngest clients, but also in my continued work in the field of youth law, now representing older youth at Bay Area Legal Aid.

★ ★ ★

⁷ <https://www.equaljusticeworks.org/fellows/tori-porell>.

⁸ <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/legal-representation-for-the-youngest-clients-a-holistic-approach>.

⁹ https://cdn.ymaws.com/www.naccchildlaw.org/resource/resmgr/2020_conference/nacc_virtucon2020_program.pdf.