

WRITTEN TESTIMONY

Center for Family Representation (CFR)

Testimony for Committee on Children and Youth

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Center for Family Representation (CFR) is grateful for the opportunity to submit testimony to the Committee on Children and Youth. We thank Chair Stevens, and the Committee for providing the opportunity to focus on this important issue.

Overview of CFR

CFR is the county-wide assigned indigent defense provider for parents who are facing ACS prosecutions in lower Manhattan, Queens, and Richmond Counties. CFR is also a conflict-provider of parent representation in Bronx county. Since our founding in 2002, we have represented more than 13,500 parents with more than 27,500 children. CFR represents parents on their original neglect or abuse case and on any related cases like custody, guardianship, visitation and termination of parental rights cases. Our goals are always to prevent a foster placement, or when one is unavoidable, to shorten the time that families are separated and help families stabilize when reunited. and to prevent re-entry into placement after reunification.

CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every parent is assigned an attorney and a social work staff member and these teams are supported by paralegals, supervisors, and parent advocates, who are parents who have direct experience being prosecuted by the family policing system,¹ losing their children to the foster system and safely reunifying their families. In 2015, the New York State Bar Association

¹ CFR follows the leadership of directly-impacted people and has chosen to use the term “family policing system” to describe what has traditionally been called the “child welfare system” or the “child protection system,” to reflect the system’s prioritization of and roots in surveillance, punishment, and control rather than genuine assistance to and support of families living in poverty. [The family policing system] “is designed to regulate and punish Black and other marginalized people.” Dorothy Roberts, Abolishing Policing also Means Abolishing Family Regulation, IMPRINT (June 16, 2020, 5:26 AM) [hereinafter Roberts, Abolishing], <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation/44480> [https://perma.cc/3VAJ-H8WP].

gave CFR its Award for Promoting Standards of Excellence in Mandated Representation, noting that CFR “exemplifies and defines the highest professional practice standards, is a recognized innovator in parent representation and is a tireless advocate for legislative and policy reform.” The federal Administration for Children, Youth and Families specifically cited CFR in the addendum to its January 2017 Memorandum on High Quality Legal Representation, issued to all fifty states.

To better support family stability, CFR launched our Home for Good program in 2015 to help families with collateral challenges that are the result of or contribute to family policing investigations and prosecutions. With the support of New York City Council, Home for Good serves clients in the areas of housing, immigration, public benefits, and concurrent criminal matters. DoVE funding from the City Council is also critical in helping us maintain our model and allows us to provide social work support to survivors of domestic violence. In 2019, CFR further expanded its work, creating a Community Advocacy Project to help families navigate family policing investigations and avoid family separation while at the same time ensuring the parents are not barred from employment by representing parents in efforts to amend and seal their records with the Statewide Central Register. CFR also launched its Youth Defense Practice and now represents young people in Manhattan, Queens, and Bronx family courts with its interdisciplinary model expanding to add the goal of avoiding incarceration.

New York City’s Foster System Requires Additional Transparency and Independent Oversight

Many of New York City’s foster agencies have contracts with immense budgets and extensive programming that is simultaneously distinct from and also fundamentally connected to their foster placement programs. As an example, the foster agency JCCA has more than 20 programs listed on its website, only 5 of which are labeled “foster care.”² Some of these programs are services designed to assist families who have been separated, for example, mental health services for young people and their families. For many families in New York City, the agency responsible for continuing a family’s separation is the same agency that is tasked with helping that family heal from the harm of separation.

Requiring greater transparency about foster agency contracts and how the success of those contracts is measured is essential to understanding 1) how success of foster agency programs are measured, 2) whether foster agencies are doing what their contract obligates, and 3) whether that foster agency is the appropriate provider for that contract or whether those funds would be better spent on community based organizations that are not connected to family policing agencies.

ACS contracts with New York City’s foster agencies but whether and how they provide oversight to those foster agencies is unclear to the public. Additionally, because the interests of ACS and

foster agencies are sometimes aligned and sometimes in conflict, it is impossible to know whether ACS can impartially assess a foster agency's decisions. As an example, CFR staff have experienced the foster agency refusing to reunite a family and pursuing a termination of family rights even when ACS has determined that the family is safe to reunify.

Foster Agencies Measure Compliance Instead of Safety, Delaying or Disrupting Reunification

At CFR we often see that once families are separated and children are placed in the foster system, fundamental questions about safety are replaced with questions around compliance. Parents can be punished for not complying with the agency's demands and it often seems as though compliance is more important than progress in services or the quality of family time. When the focus of the agency is on documenting a parent's attitude towards the case planner or if the parent is late to their visits rather than their motivation to meet their children's needs or address any safety concerns, reunification is delayed and sometimes denied for reasons that are unrelated to child safety.

How Foster Placements are Assigned and the Vast Differences Between Foster Agencies Impacts Families' Ability to Reunify.

Whether families are successful in reuniting after they have been separated by family policing is highly impacted by the foster agency where their child is placed. However, the foster agency assignment process is largely opaque to families and advocates.³ Each agency has different schedules, structures, funding sources, services, and facilities. Some agencies employ educational advocates or behavioral specialists and others have none of these resources.

The fact that parents and advocates do not have information about foster placement determinations as they are happening makes it impossible for them to fully inform the Court as Judges weigh the legally required balancing test when determining whether the harm of removal outweighs the risk of harm to the child.⁴ As an example, if the Court knew that the only foster

³ There is extremely limited information publicly available about how decisions about foster placements are made. ACS Placement Module, <https://www.nyc.gov/assets/acs/pdf/about/2019/xPlacementmodule.pdf>. Some decisions about where and how children have been placed in certain foster homes are inscrutable (such as English-speaking children being placed in a home with a Spanish-speaking foster parent or children being placed in foster homes extremely far from where their families live).

⁴ F.C.A. § 1027, *Nicholson v. Scopetta*, 3 N.Y.3d 357, 378, 820 N.E.2d 840, 852 (2004), (the court *must do more* than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child's best interests.”).

placement option for a child was two boroughs away from their family and community or that the proposed foster placement was with foster resources that didn't speak the children's native language, they may make a different assessment of the harm of removal.

This reality illuminates the deep inequality that exists for families who are separated and seeking to reunify. CFR is not advocating for additional resources to be provided to agencies to equalize them, rather, we hope that this testimony demonstrates the need for careful, thorough, and publicly available and understandable data about foster agencies. The rights of families to remain together cannot be based in any way on "luck of the draw."

Foster Agencies Often Exclude Parents from their Children's Lives Frustrating Reunification

In our representation we have found that foster agencies routinely fail to include or intentionally exclude parents from their children's care for reasons that have nothing to do with safety. Some examples of this are, failing to invite the parent to their child's special education evaluations or IEP meetings, failing to translate necessary documents into the parents preferred language, failing to move appointments so that a parent can attend, or insisting that children see doctors that are "in-house" within the agency, rather than the family's own pediatrician preventing parents from being able to easily follow up, obtain medical records or seek a second opinion.⁵

Because the foster agency is tasked with assessing a parent's ongoing relationship with their child and parenting capacity, these exclusions are not just emotionally harmful to the parent-child bond, but also have legal consequences for a family as they seek to reunify.

City Council Must Require ACS and New York City's Foster Agencies to be Transparent and Accountable

- City Council and ACS should make public foster agency contracts and scorecards publicly available in a way that the public can read and understand them.
- City Council and ACS should monitor, assess, and publish data on the length of time that children in New York City remain in each foster placement and how long each family remains separated, including when children are separated from their siblings.
- City Council and ACS should create a mechanism by which families can provide anonymous feedback about how they were treated by the foster agency and that feedback should be published and included as a metric of a foster agency's success.
- Rather than measure success by whether "permanency" is achieved, City Council should require that agencies meet reunification goals and determine whether city contracts should remain with those agencies if they are not meeting those goals.

⁵ Particularly when children receive medical care from a medical provider within the foster agency, parents struggle to learn information from their children's doctors or obtain their children's medical records from foster agencies, even after they have been reunited and are no longer being supervised by any family policing agency.

- Oversight of foster agencies should come from outside of ACS.
- The city council should further invest in strengthening communities by passing the Family Miranda Act bills ([1157-2024](#) and [0096-2024](#)).

For follow up, please contact Senior Policy Counsel **Hannah Mercuris** at Hmercuris@cfrny.org.