

The Role of Civil Litigation in Transforming Policy and Practice in Child Welfare, Education, and Mental Health: *Peter P. v. CUSD*

Mark Rosenbaum – CUBE Annual Conference
October 1, 2016



Public Counsel, Opportunity Under Law

- Public Counsel, Opportunity Under Law is a project within Public Counsel, a legal services provider, that uses civil rights impact litigation to address economic injustice, particularly in cases of education inequity

How did this case come about?

- “If you want to do something about the achievement gap, you have got to look at childhood trauma.”
- Direct services
- History of education equity litigation

Americans with Disabilities Act/Rehabilitation Act

- “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity or subjected to discrimination by any such entity.” 42 U.S.C. § 12132

Definition of “Disability” Under ADA/504

- A “physical or mental impairment that substantially limits one or more major life activities....” 42 U.S.C. § 12102(1)(A).

Definition of “Disability” Under ADA/504

- “Major life activities” include “including “learning, reading, concentrating, thinking, [and] communicating.” 42 U.S.C. § 12102(2)(A)

Case Law on ADA/504

- Key phrases:
 - “meaningful access”
 - “reasonable accommodation”
 - *See, e.g., Alexander v. Choate*, 469 U.S.287, 301 (1985)

Interdisciplinary Collaboration

- Brain Science
- Social Science
- Law
- Education Experts

Brain Science

- Childhood trauma can have lasting physiological effects on the developing brain
- Manifests in dissociative (“freeze and surrender”) behaviors, or hyper-reactive (“fight or flight”) behaviors
 - often labeled “willful defiance” or “aggressive/disruptive” behavior
- To oversimplify: the cortex—necessary for higher-level functioning, such as academic learning—is not available in various degrees to many students dealing with the consequences of complex trauma

Social Science

- Students with repeated exposure to traumatic events are:
 - 2.5 times more likely to repeat a grade
 - 4 times more likely to experience academic failure
 - 5 times more likely to have severe attendance issues
 - 6 times more likely to experience behavioral problems

• Sources: Christina D. Bethell et al., Adverse Childhood Experiences: Assessing the Impact on Health and School Engagement and the Mitigating Role of Resilience 33:12 Health Affairs 2106, 2111; Christopher Blodgett, Adopting ACEs Screening and Assessment in Child Serving Systems (working paper), Christopher Blodgett, No School Alone: How Community Risks and Assets Contribute to School and Youth Success, Report to the WA State Office of Financial Management in response to Substitute House Bill 2739 (March 2015).

Why Compton?

- Homicide rate is five times the national average
- The rate of families living in poverty is twice the national average
- Severely under-resourced
 - At the time the suit was filed, CUSD had fewer than 24 psychologists and counselors across the nearly 25,000-student district
 - In contrast, Beverly Hills High, with 1800 students, employs 9 counselors and a psychologist, more than all three Compton high schools combined.

- Sources: *Murder Rates Nationally and by State*, The Death Penalty Information Center, <http://deathpenaltyinfo.org/murder-rates-nationally-and-state>; State & County QuickFacts, Compton (city), California, U.S. Census Bureau, <http://quickfacts.census.gov/qfd/states/06/0615044.html>; <https://news.vice.com/article/should-growing-up-in-compton-be-considered-a-disability>

Remedies

- “Whole school approach” is necessary
- Have been successfully implemented in schools with similar demographics to Compton

Remedies

- The following reasonable accommodations can significantly improve educational outcomes for students who have been negatively impacted by trauma:
 - Training—to recognize trauma and its effects, and how to respond
 - Building social-emotional learning skills in proactive and stable classrooms
 - Restorative justice instead of punitive remedies, where appropriate
 - Mental health support for students who need it

Current status of litigation?

- Survived Motion to Dismiss
- Court-ordered mediation

Larger Implications of the Lawsuit and What it Means for Other Schools and Systems

- Catalyst for change
- Potential precedential value for other lawsuits

Follow-up/Contact Info

www.traumaandlearning.org

- mrosenbaum@publiccounsel.org;
keidmann@publiccounsel.org
- 213.385.2977, ext 142/234