

Nebraska Appleseed Launches New Legal Resource Center for Child Welfare Lawyers

by Sarah Helvey

The photos above are from Nebraska Appleseed's grassroots photography project, "Reality and the Roots." See the complete exhibit at www.neappleseed.org/roots.

The Nebraska Appleseed Center for Law in the Public Interest (Nebraska Appleseed) announces the launch of the Foster Care Reform Legal Resource Center, a new effort to work with child welfare lawyers in reform of Nebraska's foster care system. The goal of the Legal Resource Center is to assist child welfare lawyers—guardians ad litem and attorneys for biological and foster parents—in enforcing the legal rights of children and families, developing positive precedents in juvenile cases, and advocating for policies and practices that will create systemic change.

Background

Nebraska Appleseed is a non-profit, non-partisan law project that works to address systemic issues facing low-income Nebraskans and remove obstacles to self-sufficiency. Nebraska



Photo credits are: Top photo, Tomasa Salas; photo on right, Margelyn Shoulder; and photo on left, Jeffrey Bollman.

Appleseed focuses on advancing policies and practices that promote self-sufficiency for Nebraska's working poor families, promote the integration and participation of immigrant populations in communities across Nebraska, provide safe and adequate child welfare services to children who need protection, increase low-income people's access to the legal system and support democracy by removing barriers to low-income people's participation in the electoral and public policy decision-making processes.

In 2003, Nebraska Appleseed created the Child Welfare System Accountability Program (CWSAP), which seeks to protect the legal rights of children in foster care and to work for comprehensive reform of the system. The project is focused on enforcing constitutional, federal, and state statutory requirements for providing adequate child protection services in the State of Nebraska and using legal advocacy to support needed policy reform initiatives.

Nebraska's Broken Foster Care System

This past year, Nebraska set a new record of over 7,800 children in its child welfare system, one of the highest per capita in the country. A recently released report from the Nebraska Foster Care Review Board indicated that 31% of children in foster care have been in six or more placements, 37% have had four or more different caseworkers, and 26% have been in foster care for two years or more.¹

In September of 2005, after years of thorough investigation, Nebraska Appleseed, along with a local and national legal team, filed a federal class action lawsuit on behalf of Nebraska's then 6,000 foster children.² The suit alleged that Nebraska's child welfare system violated the constitutional and statutory rights of foster children by, for example, moving them too frequently and to inappropriate placements, leaving them too long in



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emergency shelters and temporary placements, placing infants and other very young children in emergency shelters, overcrowding foster homes, allowing abuse and neglect in foster care, overusing institutional care, and leaving children in state custody too long. The suit alleged that these problems resulted from a severe shortage of foster homes, high caseloads and turnover among child protection workers, lack of basic health services for foster kids, poor monitoring of child safety, poor planning and services to move children out of foster care and into permanent homes, and inadequate payments to foster care providers.

Unfortunately, the case was dismissed in January by Judge Richard Kopf, who adopted Magistrate Judge David Piester's August 16, 2006 Report and Recommendation. Among other things, Judge Kopf used the rarely used doctrine of abstention under *Younger v. Harris* to dismiss the case, finding that any injunctive relief the Court might grant would unduly interfere with the Nebraska juvenile courts.³ Despite this disappointing decision, Nebraska Appleseed will continue to fight for the legal rights of these children and work for lasting and meaningful reform of the system. While the state has recently claimed some modest improvements, advocates agree that Nebraska has far to go to repair our broken foster care system.

Fortunately, there are many lawyers who can and want to help . . .

Nebraska Lawyers, Working Together to Create a Model Foster Care System

Across the state, there are hundreds of Nebraska lawyers who work "on the ground" with children and families in the system, as guardians ad litem and counsel representing foster and biological parents. These lawyers on the "front lines" are the very heart and soul of the legal system's response to the thousands of needs within the foster care system.

In January of this year, Nebraska Appleseed launched the Foster Care Reform Legal Resource Center as a way to assist child welfare lawyers in addressing the systemic issues facing the children and families they represent. Through the Legal Resource Center, Appleseed staff are available to assist child welfare lawyers by providing resources such as legal research on systemic issues, information on system-wide problems, and updates on relevant case law and policy developments. Appleseed staff are also involved in collaborating with practitioners to help create more positive precedent in the courts, and tie cases and issues together for stronger impact. In addition, Appleseed is working closely with other initiatives across the state.

Specifically, the Foster Care Reform Legal Resource Center can provide the following resources:

- Legal research on constitutional or statutory issues implicating *systemic* issues in the system
- Co-counseling, intervention, and development of amicus briefs in *selected* cases involving *systemic* policy issues

- Information on child welfare reform that is occurring across the state, including case law and legislative developments
- Hosting a Nebraska child welfare listserv featuring regular updates and the opportunity to dialogue with other juvenile lawyers across the state on practice issues
- In the future, the legal resource center will also provide resources including sample pleadings and briefs and collaborative trainings

The goal of the Legal Resource Center is to develop positive precedents in juvenile cases and policies and practices that protect the rights of children, such as caseload limits for caseworkers, "reasonable efforts" requirements to ensure that the state is providing appropriate services to children and families, improved placements and permanency, and increased financial and institutional support for guardians ad litem and court appointed special advocates (CASAs). We believe hundreds of lawyers asserting the rights of children across the state, with the collective intent of creating not just a better system but a model system, will have a powerful impact—and we invite lawyers to join us!

Get Involved!

Appleseed invites lawyers to contact the Foster Care Reform Legal Resource Center to discuss systemic issues that arise in their juvenile court practices.⁴ Lawyers interested in joining the Foster Care Reform Legal Resource Center listserv, can sign up at the website below. Appleseed sends regular updates highlighting child welfare case law, policy, and legislative developments, and foster care reform issues. The updates mainly focus on Nebraska juvenile court practice, but from time to time feature successful reform or relevant case law developments in other states. We also encourage listserv members to use the list to communicate with one another about issues and challenges that arise in their juvenile court practices.

For more information on the Foster Care Reform Legal Resource Center and to sign up for the Listserv, please visit: www.neappleseed.org/lrc.

For more information about Nebraska Appleseed's Child Welfare System Accountability Program, please visit: www.neappleseed.org/children. 

Endnotes

- ¹ Nebraska Foster Care Review Board, 2005 Annual Report and Recommendations.
- ² *Carson P. et. al., v. Heineman, et. al.*, 05CV3241, (Judge Kopf) (Magistrate Judge Piester).
- ³ All pleadings not otherwise under seal and the court's decisions are posted at www.neappleseed.org/litigation.
- ⁴ Because the mission of Nebraska Appleseed is to address policies and systemic issues facing low-income Nebraskans, the Foster Care Reform Legal Resource Center is only able to provide assistance on cases that involve systemic issues in the child welfare system that are within our expertise and resources to address.