



**The Courts' Role Beyond the Courtroom:
A Case Study of New York's Permanent Judicial
Commission on Justice for Children and
Early Intervention**

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The Permanent Judicial Commission on Justice for Children

Published in Children's Legal Rights Journal

A Publication of the ABA Center on Children and the Law
And Loyola University Chicago School of Law
Volume 16/Number 4/ Fall 1996

ON THE HORIZON

The Courts' Role Beyond the Courtroom: A Case Study of New York's Permanent Judicial Commission on Justice for Children and Early Intervention

by Sheryl Dicker and Ellen Schall*

I. Introduction

A. Creating the Commission

The epidemics of the 1980s -- crack, AIDS, homelessness and poverty -- had a profound impact on our nation's courts, particularly family courts.¹ Caseloads skyrocketed.² Many children who come before the courts are very young³ and display serious developmental delays but do not receive needed services.⁴ While judges must resolve individual disputes brought before them on a particular set of facts and law, the wider social context provides a backdrop to cases before the courts. Over the past five years, the Permanent Judicial Commission on Justice for Children has tried to become a mechanism that taps that wider context. The Commission seeks to translate the court's learning about the lives of poor children and families into policy language and then serves as a vehicle to bring that understanding into the policy arena.

The Commission was established in 1988 by the Chief Judge of New York's Court of Appeals, the state's highest court. Its membership includes judges, state and local officials, attorneys and child advocates. Over the past five years, the Commission has focused on the problems of young children and the courts. It began this endeavor by bringing to the attention of policy makers the problems of the most vulnerable children -- young, poor children with serious developmental delays -- who pass through the courts.

The Commission's efforts, along with others, resulted in the passage and implementation of the New York Early Intervention Laws of 1992 and 1993. Those laws repealed an antiquated provision of the Family Court Act that required parents to petition the Family Court to receive state-funded services for a young child with a disability. The new law also implemented the federal Infant and Toddler Early Intervention Program for children with disabilities. The federal law, known as Part H,⁵ established a comprehensive system of educa-

tional, therapeutic and family support services for children under the age of three with, or at risk of, developmental delay.

This article will trace the activities of the Commission to help secure passage and implementation of the Early Intervention Laws of 1992 and 1993 as an example of the type of policy and action-oriented work in which the Commission engages. The Commission's efforts included its study of the child developmental research on the components of effective early intervention and the requisites of the federal law, a study of the existing Family Court system, and the Commission's use of a variety of strategies to achieve passage and implementation of the law. The article will conclude with an overview of the law's impact and our reflections on what we learned.

B. The Commission Begins its Work

The Chief Judge formed the Commission in 1988 in response to the enormous changes that had occurred in the court system during the 1980s. For example, the number of cases involving child abuse and neglect doubled during this period, and the caseload of the Family Courts skyrocketed.⁶

In 1991, after three years of broad discussions, the Commission made two key decisions that we believe laid the groundwork for our success. First, the Commission decided to target its activities on one subset of children for at least two to three years rather than address all issues facing all children. Second, we made a conscious decision to focus on results rather than on creating reports.

The Commission chose as its focus poor children age zero to five both because their lives are increasingly touched by the court system and because research had demonstrated that early intervention can positively alter their lives.

To maximize efficiency, we engaged in two preliminary activities: documenting their status and conducting a series of key informant interviews with people who had special knowledge about their

problems. What emerged was a grim picture of the lives of New York's poor young children that gave the Commission a baseline of common knowledge upon which to begin to shape its agenda.⁷

In the early days of the Commission, the staff conducted more than 35 interviews with people who had special knowledge concerning poor young children and the courts ("key informants"). These interviews were necessary to identify specific areas needing improvement. During these discussions, the vast majority of our informants cited as an overarching concern the serious deterioration in the condition of these children. They described children displaying serious delays in communication and emotional development, and complained of the lack of appropriate services to address those problems. Whether litigant or judge, they noted the limits of their own roles. Many of the key informants expressed dismay at New York's failure to implement the federal Infant and Toddler Early Intervention Program for children with developmental delays, known as the Part H program.⁸ This federal law established a comprehensive system of educational, therapeutic and family support services for children under the age of three with, or at risk of, developmental delay. At that time, efforts to implement that law in New York were stalled.

The Governor had tried for two years without success to implement Part H in New York. The deadlock was due in part to New York's unique situation. Unlike any other state, New York had a system that required the Family Court to enter orders for preschool special education services.⁹ No executive branch agency had the power to make eligibility decisions. New York's system, which in 1991 served over 7,000 children at a cost of over \$140 million or \$20,000 per child, (a burden shared equally by the state and county without any federal funds)¹⁰ operated without any regulations or rules for determining a child's needs for services or for monitoring the quality or cost of the services. Many key informants expressed concern that New York's system, unlike the federal law, did not reach the children most in need.

II. Identifying the Possibilities for Action

The Commission established an Early Care Working Group to consider how it might achieve reform of the existing system of services for children with disabilities under age three. This was designed to take advantage of the opportunities

presented by Part H. The Early Care Working Group began its work in October 1991. It took a fresh approach to the issue by studying the components of effective early intervention and the federal law, the operation of the Family Court order program, and pending bills to implement the federal law in New York.

A. Components of Effective Early Intervention

i. Child Development Research

The Commission relied heavily on experts in child development to assist us in building our own understanding. Chief among those experts was Dr. Cecilia McCarton, Director of the Low Birth Weight Infant Follow-up and Evaluation program (L.I.F.E.) at the Albert Einstein College of Medicine Hospital.

Dr. McCarton summarized for the Commission research that demonstrated that appropriate early intervention can lessen the need for special education, reduce teen pregnancy and decrease the likelihood that children will drop out of school. Perhaps the best known of these studies involved a consortium of 11 programs composed of efforts of early childhood programs for disadvantaged children established with the goal of preventing school failure.¹¹

The Robert Wood Johnson Foundation study on early intervention, with which Dr. McCarton was involved, was particularly relevant to our work.¹² The Robert Wood Johnson Foundation (RWJ) has funded a nationwide, eight site study (one at the Albert Einstein Medical Center in New York City), to test the efficacy of early intervention programs on low birth weight babies, a growing phenomenon due to technological advances. The intervention included home visits, ongoing pediatric care, a parent support group, and at age one an educational program at a child development center. At age three, the intervention group had shown significant gains in development, including higher IQ scores and fewer behavioral problems. Indeed, for children with higher birth weight (approximately four to five pounds) only half as many children in the intervention group were classified as mentally retarded.

The RWJ study provided definitive evidence of the efficacy of early intervention starting at birth for even the most vulnerable children -- low birth weight premature infants. It also helped us to identify the fundamental components of successful efforts to combat long-term problems for disadvan-

tagged children. First, a range of services has to be provided that addresses their diverse problems. These services could include health care, education, child care and various therapies. Second, and perhaps even more important, needs of very young children can best be understood and effectively addressed in the context of the family. Family support services including home visits, parent support groups, parent training and education are vital to enable parents to enhance their child's development.

We became convinced that there were efforts that could make a difference, and that New York State was lagging behind. The way New York State provided services to children with disabilities needed to be changed.

ii. Federal Early Intervention Law

Congress enacted Part H in October 1986 when it amended the Education for the Handicapped Act,¹³ a statute addressing the education of children with disabilities under age five. It required all states that participate in the federal special education program to serve children with disabilities from age three to five, by the 1991-92 school year. It also created an early intervention program for infants and toddlers with disabling conditions age birth to two. While the extension of special education services of children ages three to five merely applied the requirements of special education law to the younger age group, the new program for children from birth to their third birthday operated with a different orientation premised on the child development research.

By passing Part H, Congress intended to enhance the development of infants and toddlers with disabling conditions and minimize their potential for developmental delay so as to "(reduce) the needs for special education and related services after (those) infants and toddlers reach school age"¹⁴ and to maximize the likelihood that they will "lead productive lives in the community."¹⁵

States choosing to participate in the Part H program were given five years to establish an inter-agency, multidisciplinary, family-focused early intervention system.¹⁶ In order to receive further funding after the expiration of the planning grants in 1991, states had to have fully implemented the Part H program, which had been deemed to be an entitlement program by the U.S. Department of Education.¹⁷

Three categories of children from birth to their third birthday may be eligible for this entitlement:

children who are experiencing developmental delay; children with diagnosed physical and mental conditions that have a "high probability of resulting in delay; and "children who are 'at risk' of developmental delays if early intervention services are not provided."¹⁸ The first two categories are mandatory for the states involved. Inclusion of the "at risk" category is at the discretion of each state.

Under the federal law, each state opting in must develop a plan that is overseen by a "lead" agency. The lead agency works in cooperation with a gubernatorially appointed inter-agency coordinating council that includes representatives of the public agencies that serve these children, as well as service providers and parents. There are several mandatory provisions for the state plan including:

- states must establish a comprehensive child find program to identify, locate and evaluate eligible children;
- children who are referred must be given a timely, comprehensive, multidisciplinary evaluation to determine eligibility;
- for any child found eligible, a multidisciplinary assessment must be performed that focuses on the needs of the entire family, not solely on those of the child;
- parents must give written consent to an evaluation and to the program and placement for the child;
- an individualized, written family services plan (IFSP) must be developed for families found to be in need of services, and the plan must be reviewed at least every six months;
- the IFSP must include the child's current developmental level based on accepted, objective criteria; the family strengths and needs; the expected outcomes for the child and the services necessary to meet the needs of the child and the family;
- the state must provide at either no cost to the parent or with the use of a sliding fee scale, the services enumerated in the IFSP;
- the appropriate services must include traditional services for children with developmental delays such as occupational therapy, physical therapy and speech therapy as well as family training, counselling and case management;
- these services must be provided in the type of settings in which infant and toddlers with-

out disabling conditions would participate (for example, at home, family daycare, daycare center);

- the services must be coordinated with existing programs including Head Start, special education, and Early and Periodic Screening Diagnosis and Treatment (EPSDT);
- the procedural safeguards echo those of special education law and include the right of confidentiality; the right of parents to examine records; the right of notice prior to an initiation or change of program; the right to a timely resolution of any complaint and an opportunity to appeal for administrative and court review; and, the appointment of a surrogate parent to protect the rights of infants and toddlers whose parents are unknown or unavailable or when the child is a ward of the state.¹⁹

iii. Operation of the Family Court Order System

To understand the actual operation of the existing Family Court order program, the Commission reviewed data concerning the number of petitions filed. It disseminated and analyzed a questionnaire sent to all Family Court "Designees" (generally a county official but sometimes a court clerk) to learn about the "H" Petition process in each county. And it reviewed approximately 100 actual court files throughout the state.

The research demonstrated that the Family Court order program was indeed different from other judicial procedures and made clear why the Family Court should no longer have the burden of this work. A child's eligibility for services was determined before a petition was even filed with the court. In most instances, the Family Court Designee received a petition already completed by a service provider. It seldom contained an evaluation or individual education plan.

In many cases there was no individualization of the cases. Identical petitions were submitted for different children. The provider and county invariably agreed on the child's eligibility, placement and the tuition fee. On the few occasions that hearings took place, the parent or guardian of the child was not present. Counsel was rarely present. Thus, unlike matters typically put before courts for resolution, cases involving "H" Petitions had no case or controversy to present for adjudication.

Analysis of available court data suggested a wide disparity in access to the "H" Petition process

throughout the state. This in turn signaled a huge discrepancy in the availability of services. For example, Chemung County, the poorest county outside New York City, filed a total number of four "H" Petitions for the 1991 calendar year. In contrast, a quarter of the petitions for the entire state were filed in two wealthy New York City suburban counties. Only a third of the children served were from New York City although it has a far higher percentage of children, particularly poor children.

Additionally, there was no programmatic or fiscal oversight of the system to ensure that children were receiving appropriate services in a fiscally prudent manner. There were no provisions for "child find," which meant that poor children were not being located and screened for eligibility. Most children were receiving services in a separate preschool special education setting rather than at home or within the community. Segregating developmentally disabled children into special schools deprives them of the opportunity to interact and learn from their nondisabled peers.

At that time, there was no indication that the program permitted the provision of family support programs, a vital ingredient identified by the research. The conclusion of the Commission's Working Group's Report was that the system required immediate reform -- a position that had been long advocated unsuccessfully by the court system's Family Court Rules and Procedures Committee.²⁰

iv. Early Care and Early Start

Finally, the Early Care Working Group took on the task of reviewing the existing proposals for reform. As stated earlier, the State Department of Health (DOH) had been designated by Governor Cuomo to serve as the lead agency for the Part H program in New York. DOH had drafted an "Early Care" bill that sought to implement the federal law and repeal the Family Court Order program. This would create an early intervention system, and eliminate the old system of placing children in "special schools."

A consortium of provider organizations had drafted an alternative bill called the "Early Start" bill. It too sought to implement the federal law and repeal the Family Court Order program, but it would do both while preserving the present system of special education for infants and toddlers. The Early Care Working Group met with the major proponents of each proposal to better understand both.

III. Legislative Strategy

Armed with hard data on the actual operation of the "H" Petition or Family Court order program, knowledge of the child development research and the federal law, and the Commission's proposal for reform, the Commission was prepared to work to secure passage of the Governor's Early Care bill with the Commission's proposed modifications. Due to the composition of the Commission's membership, it was in an excellent position to help shape the legislation. State Assemblyman Richard Gottfried, Chair of the Assembly Health Committee and State Senator Mary Goodhue, then Chair of the Senate Committee on Children and Families, were both members of the Commission as well as its Early Care Working Group. Both had attended the earlier Working Group meetings during which the components of effective early intervention were studied and the proposals for reform were developed. They were also familiar with the results of the Commission study on the operation of the Family Court order program.

A. Legislative Hearings

At a Working Group meeting in late January 1992, the suggestion was made that legislative hearings should be held on the two proposed bills. Two legislative leaders at that meeting encouraged the Commission to jumpstart the effort. At the legislators' request, the Commission agreed to co-sponsor those hearings. Co-sponsorship of legislative hearings by a nonlegislative body is virtually unknown, at least in New York, and the Commission embraced this opportunity.

The legislative hearings received wide attention. The notice specifically stated that all testimony would be by invitation only and would be time-limited. Testimony was invited regarding:

- 1) New York's current system for accessing special services for infants and toddlers under §236 of the Family Court Act, which has been criticized for inadequate programmatic and fiscal oversight and;
- 2) S.63334-A.7595 which has been introduced at the request of the Governor to implement the Individuals with Disability Education Act Amendment of 1986 (P.L.99-457), which repeals §236 of the Family Court Act and establishes an early intervention service program for infants and toddlers with disabling conditions, under the jurisdiction of the state health department.

Hearings were held on February 28, 1992, in New York City and March 9, 1992, in Albany. The Commission co-chairs presided along with legislators over the hearings and actively questioned witnesses who included state officials, parents, providers and judges. Most notably, the Commission's co-sponsorship enabled Judges to testify about the reality of the system. In New York City, Judge Kay McDonald, Administrative Judge of the New York City Family Court, and a Commission member testified that in New York City, "H" Petition files contained little information about each child. She acknowledged that there is no inquiry into the child's condition, there was seldom a particular finding concerning the appropriateness of a proposed program, and no scrutiny of the costs associated with a proposed program. At the hearing in Albany, Commission member, Judge Leonard Maas of Rochester noted that only two or three hearings had been held for the thousands of "H" Petitions that had been approved in these courts in Monroe and neighboring counties over the past five years. He stated that the courts play "only a very minor administrative role in the process."

There was also ample testimony at the hearing about the need to develop services in natural environments for children. Many witnesses testified that most children served under the Family Court Act were in segregated settings with other children with disabilities in special education preschools. Parents as well as other experts talked about the research indicating the clear benefits of including children with disabilities with their nondisabled peers. Individual parents pointedly urged this approach as well. One parent, for example, asked how her nonverbal child could learn to speak in a classroom with only other nonverbal children.

Commission Co-chair Judge Judith Kaye summed up the two days of hearings stating that three things were apparent: "the current system is 'fatally flawed', there is a consensus that children with developmental disabilities need to be served side by side with all other children, and the legislature faces a complex task in developing a bill that meets the expectations and needs of those whose lives and careers are affected by the Early Intervention system."

B. Next Steps

During March, April and early May the Commission's Executive Director met with legislative leaders as well as the Governor's office to help shape a revised Early Care bill. A series of meetings also were held with various interest groups -- providers,

parents, counties, health and children's advocates -- concerning this bill. It was clear after the hearings that the climate was beginning to change. The providers now recognized that it was unlikely that the Early Start bill, which would codify the present system under the umbrella of the federal law, would pass.

In early May of that year, the Governor's office issued a revised Early Care bill that included most of the Commission's recommendations and also attempted to address some of the concerns of both Early Care and Early Start proponents. Despite the concessions made by the Governor's revised bill to the Early Start proponents, these providers remained critical of the Governor's proposal. They adopted a strategy of delay. They attempted to raise so many issues that it would be impossible to develop a consensus bill before the end of the legislative session in late June. Provider representatives proposed a summer retreat for all the parties to draft a new consensus bill. Legislators were told that the contested issues were insurmountable in the remaining weeks of the legislative session.

The opponent's strategy made it difficult to move the bill. Deferral of a controversial issue had enormous appeal. It was the legislators' hope that the parties could over time work out a consensus bill. The challenge for the Commission was to make it clear that the existing system was so undesirable that change had to occur.

C. Power of Court Rules

The Early Care Working Group had long known its "H" Petition report was a powerful tool for exposing the flaws of the current Family Court Act program. Judge Kaye believed there was a "moral imperative to reform that system" and to act to make change occur either legislatively or administratively.

In May, the Commission staff drafted proposed court rules for §236 of the Family Court Act. Court rules govern the operation of the court process. No such rules existed for this section, although the Administrative Board of the New York State Courts had the power to promulgate such rules. The purpose of the proposed rules, in the absence of any change in the statute, would be to ensure at a minimum that a Family Court judge had all the evidence necessary to an informed decision that a child was in need of services. The Working Group endeavored to create proposed court rules that would be consistent with the key provisions of the federal early intervention legislation.²¹

The rules would have reformed the existing Family Court Order program. The rules could not build in all of the services that were needed, since as court rules they were limited to illuminating the court's role. Thus, the whole panoply of services that would be available under the proposed legislation, such as health care or social services, could not be made available through court rules nor could the crucial family support services. But the Working Group agreed that in the absence of a legislative solution, court rules offered at least some solution to the need for reform. The full Commission agreed at its June 1992 meeting that the proposed rules should be submitted for approval only in the event that a bill was not passed during the 1992 legislative session.

The providers and their representatives learned of the proposed rules and called the Commission staff to criticize them. Heated conversations ensued concerning the need for these rules. The prospect of court rules was apparently of great concern to the providers. The Commission's position was that such rules would be unnecessary if a legislative compromise could be reached.

Meanwhile, both sides actively lobbied the legislature. The need to pass the Early Care bill was conveyed by many members of the Commission to New York legislators. Commission members were enlisted to call key legislators and legislative leaders. Efforts were coordinated with other groups. Most notably among these were two child advocacy organizations: State Communities Aid Association, and Citizens Committee for Children. The New York State Bar Association, which supported the Commission's position, was particularly active and targeted Republican Senators who were proponents of either Early Start or perpetual delay. The revised Governor's bill was amended several times in late June to reflect all of the Commission's recommendations.

Until a few days before the end of the session, the sentiment for delay seemed to prevail. Momentum, however, began to shift. The pressure of proposed court rules was felt. The issue had changed from one of preserving the status quo to trying to control the new system.

Finally, on July 1, 1992, both the Senate and Assembly passed a version of the early care bill but gave it a new name -- the "Early Intervention Bill". The bill, which became effective on July 1, 1993, contained many of the proposals of the Working Group.²²

On September 17, 1992, before a crowd of hundreds in a large ornate room in the Capitol in Al-

bany, Governor Cuomo formally signed the Early Intervention law. Governor Cuomo singled out the Commission for its efforts on behalf of the bill. The co-chairs and director of the Commission surrounded the Governor as he signed the bill in this elaborate ceremony. Now the hard part -- implementation -- begins.

IV. Epilogue

In July 1993 the Early Intervention law became effective and by 1994 it was fully implemented statewide. The results have been promising. Over 15,000 young children are receiving early intervention services. The majority are served in community-based settings rather than segregated schools of the old system. Yet unlike many reforms, the cost of providing appropriate services is less per child than under the old system.²³

The Commission learned several lessons from this successful effort. First, it was critical to bring information on the actual operation of the Family Court order process to the attention of lawmakers. This was necessary since, all too often, legislators are unfamiliar with the reality of the judicial process. Thus, there needs to be a mechanism, like the Commission, that can mine the experience of the judicial branch and present it in a way that gets the attention of policy makers. The Commission was in a position to spotlight the vital information. This information enabled legislators to understand the problems and thereby create system change.

Second, the court can benefit from efforts to spotlight its experiences. The courts no longer handle "H" petitions and no longer are asked to determine eligibility for services for young children with disabilities. Without this jurisdiction, over 15,000 fewer cases are filed with the court, lessening its overburdened caseload. There is a more appropriate mechanism to determine eligibility in the executive branch to ensure appropriate services for young children.

Third, real system change can occur. The court can quickly dismantle a system by ending jurisdiction. By moving this system out of the courts a system of early intervention, not special education, has been created. The number of children served has doubled since 1991. Most importantly, more poor children and more children from underserved areas are enrolled in the Early Intervention system. Due to the program's new reimbursement formula²⁴ tailored services enabling more children to be served at less cost, in more appropriate set-

tings. Finally, the system can be monitored to insure cost effective and appropriate services.

Early intervention has become a glimmer of hope in the lives of many young children who come before the court. This positive step occurred in part because the Commission was able to bring the perspective of the judicial branch to the legislative process. The Commission brought information about the actual operation of the Family Court order system to the attention of policy makers and then continued to spotlight the role of the courts and the children it served. The Commission will continue to use this model by bringing the actual experience of the courts and the children it serves beyond the courtroom to the policy making table.

Endnotes

* Sheryl Dicker and Ellen Schall are Executive Director and Co-Chair respectively of the Permanent Judicial Commission on Justice for Children. Chief Judge Judith Kaye of the State of New York co-chairs the Commission as well. The authors are most grateful to Chief Judge Kaye for her review of and insightful comments on an earlier draft of this article. The authors also thank Mai Linh Spencer, a law student at New York University Law School, for her research assistance.

1. See John J. Yanas, *Steps Urged to Alleviate Crisis in Family Court*, N.Y.L.J., May 1, 1990, at 42 (reporting that: abuse/neglect cases increased 699% in previous 10 years in New York City Family Courts and 162% in Family Courts outside NYC; during 1985-89, termination of parental rights cases increased 148%, custody and visitation petitions 134%; and two-thirds of abuse/neglect proceedings in NYC Family Courts in 1988 included allegations of drug abuse, and blaming above increases on crack, homelessness, and poverty); Sheryl Nance, *City Bar Says Crack Epidemic Puts Strain on Family Courts*, NYLJ, Dec. 4, 1989, at 2 (reporting that New York City's Family Court caseload increased 70% between 1984 and 1989, and attributing increase to crack). See also The Marrero Committee Report, reprinted in 19 Hofstra L. Rev. 755 (1991) (describing dramatic need for legal services due to the spread of AIDS, crack, other drug abuse).

2. The 1990 Report of the Chief Administrator of the Courts states that during 1989, 516,295 new cases were filed in Family Court--34% in New York City. The 1980 Report states that in 1979, there were 319,745 new cases.

3. See Carol Sherman, *Neglect/Abuse Proceedings in Family Court: Role of the Law Guardian, Prac-*

ticing Law Inst., June 10, 1988 (reporting that over one-half of neglect/abuse cases filed in 1987 involved children under six years old).

4. See DANIEL HAWKINS AND SARA ROSENBAUM. LIVES IN THE BALANCE: A NATIONAL, STATE AND COUNTY OVERVIEW OF AMERICA'S MEDICALLY UNDERSERVED. (Washington, D.C.: National Association of Community Health Centers, 1992).

5. 20 U.S.C. Sec. 1471 *et seq.* See also notes 8 through 10, *infra* and accompanying text.

6. ANNUAL REPORT OF OFFICE OF COURT ADMINISTRATION (1990).

7. The highlights of the 1991 research were the following findings:

- About 1 out of 3 young children in New York State are poor. There are 442,173 children 0-5 years of age in New York State who live with families with income below the federal poverty line. They comprise 28% of the population in that age group and about 11% of the State's total youth population.
- Minorities are overrepresented among poor young children -- 65% of minority children are poor.
- The families of poor young children are dramatically different from their nonpoor counterparts. Seventy percent of poor children 0-5 years old live in families headed by a single mother compared to 11% of nonpoor young children. The overwhelming majority of these mothers are unemployed and nearly half did not complete high school.
- Poor young children are much more likely to be born to a teenage mother, to have a low birth weight, and to experience developmental disabilities.
- New York State is doing worse by its children than most other states. New York ranks 38th in its rate of low birth weight babies; 43rd in the timeliness and extent of prenatal care; and 39th in its rate of infant mortality.
- Only 20% of children eligible for Head Start are receiving those important services and only 40% of poor 3-5 year olds are receiving any publicly funded preschool services.
- While all New York's poor children 0-5 are Medicaid eligible, 20% are not actually covered by Medicaid or other health insurance.

8. 20 U.S.C. §1471 *et seq.* (1990)

9. N.Y. JUD. LAW FAM. CT. ACT §236 (McKinney 1983).

10. NEW YORK STATE DEPARTMENT OF HEALTH, REQUEST FOR APPLICATIONS, EARLY INTERVENTION PROGRAM (1993).

11. Perhaps the most well known of these studies involved a consortium of 11 programs composed of efforts of early childhood programs for disadvantaged children established with the goal of preventing school failure.

12. The Infant Health and Development Program, *Enhancing the Outcomes of Low Birth weight, Premature Infants* 236 JAMA IV022; Jeanne Brooks-Gunn *et al.*, *Early Intervention in Low-Birth-Weight Premature Infants: Results through Age 5 Years from the Infant Health and Development Program*, 272 JAMA 1257 (1994).

13. 20 U.S.C. §1471

14. *Id.* at 1471(a)(2).

15. *Id.* at 1471(a)(3).

16. *Id.* at 1473.

17. *Id.* at 1475(a)-(c).

18. *Id.* at 1472.

19. *Id.* at 1476.

20. In fact, the Family Court Advisory and Rules Committee had long advocated removal of the court's jurisdiction in these cases but its advice was never followed. See, e.g., 1990 Report of the Family Court Advisory and Rules Committee to the Chief Administrator of the Courts of the State of New York, in OCA ANNUAL REPORT 1990.

21. The proposed rules as drafted required:

- 1) prior to the commencement of delivery of any special education or related services a petition must be filed;
- 2) the petition shall not be deemed to be complete unless accompanied by: a comprehensive multi-disciplinary evaluation; a written IFSP, a statement from each service provider indicating the services to be provided, the fees to be charged and the basis for those fees; a signed statement from the appropriate County or City of New York official indicating that the recommended settings and services and their cost are reasonable and approved or is not and stating the reason therefore;
- 3) an order that specifies findings that a child has a disability, that the child is in need of special education services, that the setting for the delivery of services represent the least restrictive environment appropriate to the child's need and abilities; the order should indicate the nature, frequency and setting of each of the services; the order shall direct review in six months of the appropriateness

of the services and also provide a provision for modification of the court order.

22. Among the proposals the Working Group had put forward were the following:

- "At Risk" - a provision that provides "identification, tracking and screening of children at risk of developmental delay." Public Health Law §2542(1)(c) "Children 'at risk' is defined as 'children who may experience a disability because of medical, biological or environmental factors which may produce developmental delay.'" Public Health Law §2541
- parent support groups - the listing of early intervention services specifically included parent support groups. Public Health Law §2541(7)(b)(i)
- child find - efforts to identify, locate and track children must be coordinated with other programs with poor children including EPDST and SSI. Public Health Law §2542(1)(b)
- IFSP - the provision that limited the entitlement to only available services was eliminated.
- least restrictive environment - the IFSP provision contains strong least restrictive environment language requiring "a statement of the natural environment, including the home

and community setting where children with disabilities participate, in which early intervention services shall appropriately be provided and an explanation of their appropriateness," and "where the child is in day care" must include a plan to train the day care provider. Public Health Law §2545(2)(e)

- surrogate parent - the definition of "parent" has been defined to mean "parent or person in parental relation" and requires the Commissioner of Health to promulgate regulations for a child "who has no parent or person in parental relation." Regulations that apply to children in foster care shall be promulgated in consultation with the Commissioner of Social Services. Public Health Law §2541(14)

23. STATE OF N.Y. DEPT. OF HEALTH, COST-BENEFIT ANALYSIS OF IMPLEMENTING EARLY CARE, (Albany, N.Y. 1991).

24. The 1992 law required the Commissioner of Health to establish a reimbursement task force. The Commission was appointed to serve on the Task Force along with county officials, other state agency officials, parents, and advocates. Its recommendations were embodied in the 1993 Early Intervention law's provision of the reimbursement formula.