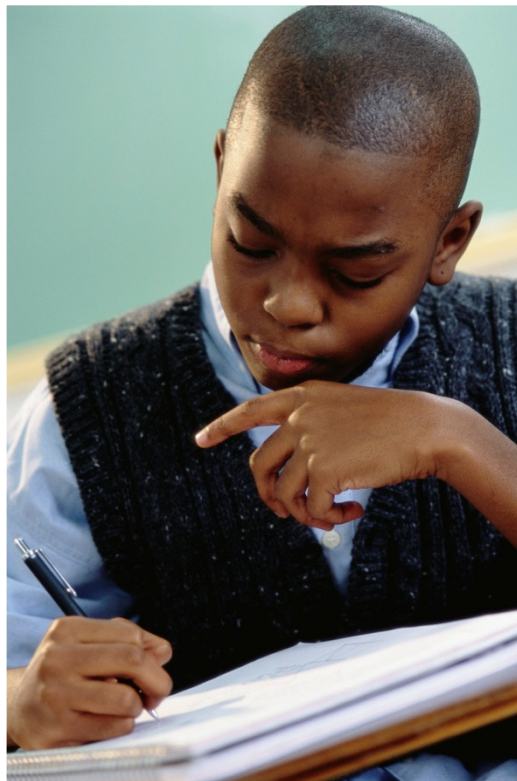




**LEGAL
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INCORPORATED

LONG-TERM CONSEQUENCES OF KINSHIP CARE: OVERCOMING OBSTACLES TO HIGHER EDUCATION FUNDING



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This paper benefited from comments by **Elizabeth Hughes**, the Lead School Counselor at the **Frederick Douglass Academy II**. Ms. Hughes was a former Director of Admissions at St. Joseph's College in New York. She works collaboratively with various public initiatives geared towards providing college counseling to students, including New Visions for Public Schools, CUNY At Home in College, and the United Federation of Teachers' (UFT) Guidance Counselors Chapter.

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Finally, this paper was written with the assistance of **Caputo Chang**, a volunteer legal fellow with the Kinship Caregiver Law Project at MFY. Ms. Chang graduated from the Boston University School of Law and joined the Project through the Boston University Law Part-Time Fellows Program.

About MFY

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We offer advice and representation to more than 8,000 New Yorkers each year. MFY's Kinship Caregiver Law Project represents and counsels New Yorkers who serve as *de facto* parents for non-biological children. MFY is the only civil legal services organization in the city that has a program dedicated to kinship caregiver issues.

EXECUTIVE SUMMARY

Kinship caregivers are the grandparents, aunts, uncles, cousins and older siblings who serve as *de facto* parents to children whose biological parents are unable or unwilling to raise them. Although some kinship caregivers are certified foster parents and may receive a range of support services, informal kinship care continues to be the largest segment of the emergency care system within and beyond New York City. While city agencies maintain no official count of the number of children living with relatives outside of the formal foster care system, social service providers estimate that more than 150,000 children in New York City live in kinship care arrangements compared to approximately 12,000 in formal foster care.

In New York, as in other areas of the country, the need for kinship care most often arises in communities with high levels of poverty, teen pregnancy, mental illness, parental incarceration, and inadequate family support services. Approximately 75% of all caregiving grandparents live near or below the poverty line. Throughout the state, an estimated 80% of all kinship caregivers are African-American or Latino, 64% are unmarried women, and 85% receive no financial support from the child's parents. Anecdotal evidence suggests that caregivers in New York City are both younger and poorer than their statewide counterparts. This combination of factors places low-income, kinship care families at extreme risk of replicating the cycle of intergenerational poverty.

Caregivers who are certified kinship foster parents enter into a relationship that places legal custody of a child in the hands of the Commissioner for Social Services and physical custody of the child in the caregiver's home. However, tens of thousands of informal kincare families exist outside of the child welfare system. While this informal relationship may protect the family from certain intrusions by the Administration for Children's Services, informal caregiving places the child and caregiver in a legal limbo that complicates a caregiver's ability to access not only immediate benefits and services that a child might need, but also future benefits like federal financial aid for college. Informal caregivers who wish to establish a legal relationship to a child must commence a Family Court proceeding, but they are not entitled to free legal representation under New York law if they are unable to afford lawyers. Few resources exist to educate these caregivers about the long-term consequences of the legal remedies they seek. Moreover, these *pro se* petitioners often receive misinformation about their legal options when they arrive at the courthouse.

High-needs kincare families face a myriad of challenges obtaining healthcare, housing, financial support, and other services to measurably improve the well-being of children. One future challenge that these children will likely face is difficulty in obtaining financial aid to attend college. The various congressional proposals to simplify the Free Application for Federal Student Aid ("FAFSA") and increase the threshold for expected family contributions now under consideration will do little to improve opportunities for children from kinship families who face

extreme obstacles to higher education access. In this report, we examine the specific issue of how different types of kinship arrangements impact a child's ability to access the higher education needed to begin breaking the cycle of poverty. We start, in Part I, by providing a background on kinship care and the difficulties caregivers face when proceeding *pro se* in New York City Family Courts. Part II focuses on issues of poverty and the educational achievement gap relevant to kinship families in New York City. We discuss the college financial aid application process and highlight specific challenges applicants in various caregiving relationships will face when applying to schools in the CUNY and SUNY systems. Finally, in Part III, we recommend a few policy reforms to help address the identified problems.

KEY FINDINGS

MFY analyzed case records from its walk-in clinic in the Bronx Family Court as well as information from clients residing in all five boroughs who contacted our telephone hotline. We also met with higher education access advocates from the Feerick Center for Social Justice, the Frederick Douglass Academy II, and the Henry Street Settlement to gather information about the student aid application process and better understand what families in different New York City communities have experienced when applying for college financial aid. Our key findings are:

- Caregivers often submit *pro se* petitions for custody or guardianship of children based on misinformation provided by courthouse clerks, which adversely affects caregivers' abilities to access various services for the child(ren);
- Caregivers who must decide between kinship foster parent status and custodial arrangements outside of the foster care system frequently do so with no understanding of how these choices may impact the child's subsequent needs, including the ability to access financial aid for post-secondary education;
- Children outside of the foster care system who were not placed pursuant to any court order ("informal" kinship care arrangements) and have no contact with their living, biological parents will be ineligible for most forms of need-based aid unless they are granted a "dependency override" by their school, a cumbersome process that varies widely from one institution to another; and
- Children whose caregivers obtained legal orders of custody will experience greater difficulties obtaining a "dependency override" than children with legal guardians or kinship foster parents.

I. KINSHIP CARE AND POVERTY

A. Demographics of Kinship Care in New York City

Ms. P. works part-time. She lives in the Bronx with her biological son and her three-month-old niece. Ms. P. fought the Administration for Children's Services in Family Court to keep her niece out of the foster care system when the infant was removed from her biological mother at birth. The child was directly placed in Ms. P.'s home pursuant to Family Court Act § 1017(2)(a)(ii) without a court order of custody or guardianship but remains under ACS supervision.

Ms. R. is the Bronx-based mother of three children and grandmother to twin infants. Ms. R. began caring for her grandchildren when they were eight-months old after her daughter, a young woman with a long-term history of mental illness, abruptly left the babies at her home. Ms. R. had no money to provide for the children's basic necessities and no documents that would allow her to apply for public assistance on the children's behalf.

Ms. W. is a paternal grandmother who lives in Brooklyn with her young grandson. Her son is serving a prison sentence at an upstate New York facility and the child's mother is incarcerated in Virginia. The child will be in Ms. W.'s care for an indefinite period of time, so she attempted to obtain a guardianship order from the Kings County Family Court. The clerk refused to allow Ms. W. to file for guardianship and told her that she was only permitted to seek custody under the Uniform Child Custody Jurisdiction and Enforcement Act.

Each of these examples was drawn from matters handled by MFY's Kinship Caregiver Law Project during the last two years. As these cases illustrate, relatives become kinship caregivers for a host of reasons. The informality of these relationships makes the precise number of children in kinship care arrangements difficult to measure with precision: a recent study by the Annie E. Casey Foundation concluded that there were some 153,000 children in New York State being raised by relatives,¹ whereas 2010 U.S. Census Bureau data indicates that there may be as many as 242,541 children in New York City living with relatives.² In contrast, approximately 11,600 children in New York City were in the foster care system in 2014.³ It is also important to note that kinship care and foster care are not mutually exclusive concepts. A significant percentage of the children in foster care are placed with relatives or "kinship foster parents."⁴ Likewise, many children move between informal kinship care arrangements and kinship foster care over the course of their childhoods.

Children who end up in the care of relatives often do so after experiencing multiple adverse experiences, such as the death or incarceration of a parent. Placement with relatives can

shield these children from experiencing the added trauma of being forced into the homes of strangers.⁵ New York courts and child welfare agencies most frequently look to maternal grandparents and relatives as the first placement resource for children.⁶ A study jointly conducted by the New York State Office of Temporary and Disability Assistance and Cornell University found that a “majority (60%) of children in relative caregiver households [in New York] are being raised by a grandparent, while 18% live with an aunt or uncle, 3% live with a great-aunt or great-uncle, and 2% live with a sibling.”⁷ However, a majority of MFY’s caregiver clients are not grandparents. Particularly in the Bronx and central Brooklyn, our project has worked with significant numbers of great-grandparents, cousins, siblings, as well as godparents who are biologically unrelated to the child in care.

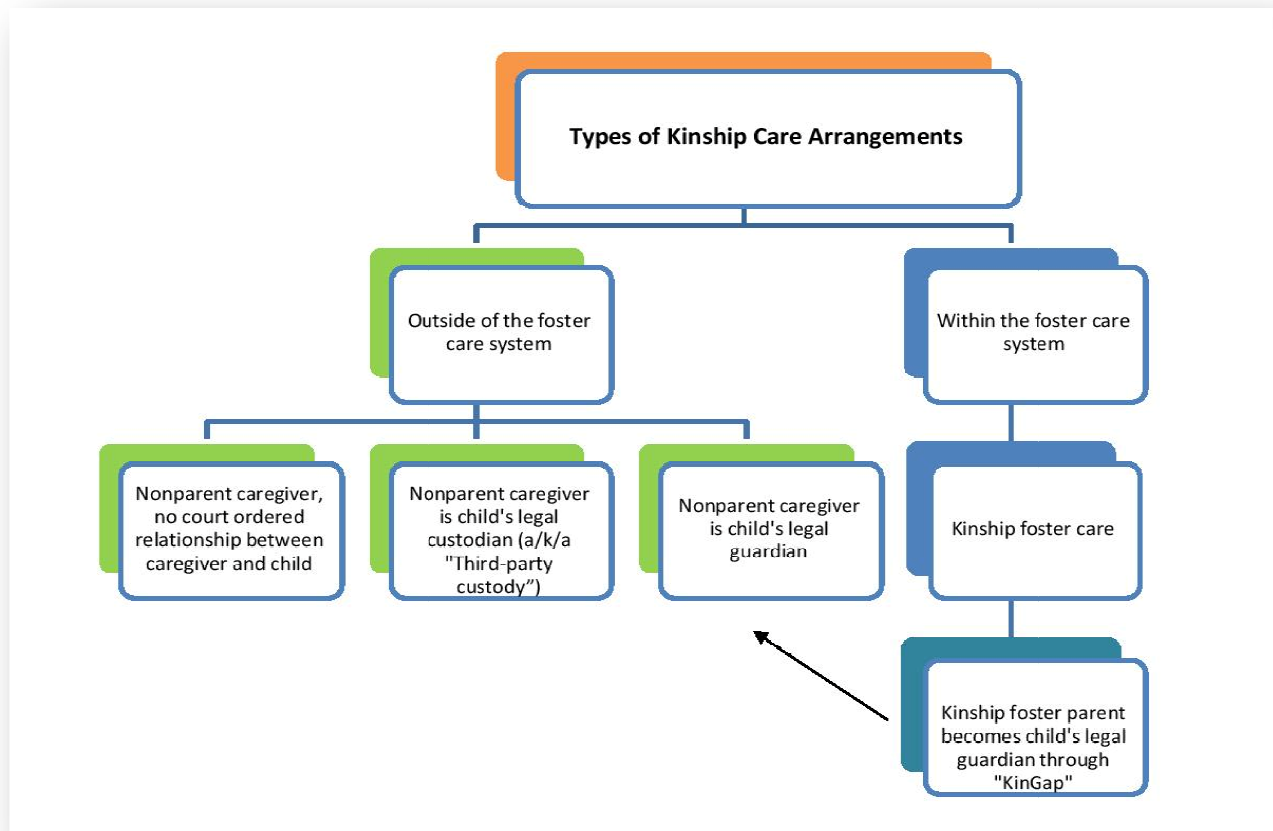


While there are many benefits to these kinship arrangements, particularly when contrasted with placements with non-relatives in the traditional foster care system, relative caregivers face a host of challenges in caring for children.⁸ One practical challenge that most New York City caregivers encounter is extreme financial hardship. Kinship caregivers are more likely to be “poor, single, older, less educated, and unemployed than families in which at least one parent is present.”⁹ A recent report by the Pew Research Center found that when compared to children raised by biological parents, most children in kinship care arrangements are likely to experience poverty.¹⁰ Among New York State kinship caregivers, approximately a majority are unemployed.¹¹ In fact, nearly half of kinship families receiving the Temporary Aid to Needy Families (“TANF”) “non-parent caregiver grant” reported experiencing food hardships.¹² In sum, “[c]hildren who are cared for primarily by a grandparent are more likely to be living below the poverty line.”¹³

Notwithstanding their dire economic circumstances, many kinship caregivers experience difficulty receiving public financial assistance. In 2008, only 18,647 nonparent caregivers in New York State received child-only TANF benefits.¹⁴ Assistance in the form of kinship foster care payments and various services, such as “a room and board stipend, respite care, and multiple services for the children, including after-school and counseling services,” are only available to caregivers in the formal foster care system.¹⁵ Meanwhile, as previously noted, the majority of these kinship families are informal or private arrangements and therefore do not have access to such assistance.¹⁶

MFY’s attorneys serve kincare families throughout New York City as well as caregivers who reside outside of New York City but are parties to active litigation cases in New York City Family Courts. However, the areas with the highest demand for our services have been in the south and central Bronx and central Brooklyn. This is consistent with other child welfare and poverty indicators for New York City as a whole. The south Bronx has some of the highest rates

of entry into the foster care system¹⁷ and kinship care. From an educational attainment perspective, most adults in that area over the age of 25 have, at most, a high school diploma, GED, or have not completed high school.¹⁸ From 2006 to 2010, approximately 25% of all Bronx residents lived in “extreme poverty” neighborhoods.¹⁹ The incomes in particular Bronx neighborhoods of high child removals are extremely low. In 2013, the median household income in Mott Haven, Melrose, Hunts Point, and Longwood was less than \$20,000 per year.²⁰ The statistics on educational attainment are similar for adult residents 25 and over in central Brooklyn, another area with high concentrations of foster care and kinship care families.²¹ While the median incomes in East New York and Bedford-Stuyvesant, may reach \$34,000 to \$39,000,²² approximately half of all children in those neighborhoods live in poverty.²³ Given the educational and income demographics of kinship care in New York City, removing barriers to educational access for children in these families, including eligibility for financial aid, should be a priority for child welfare and other advocates.



B. Inadequate Information on Caregiving Options

1. Family Court Clerks and Misinformation at the Courthouse

While many legal and social service distinctions separate informal caregivers from those who are connected to the child welfare system, families often define their relationships to children in profoundly different ways. One relative can serve as a *direct placement* resource when the Administration for Children’s Services removes a child from his or her biological parent(s). Another similarly-situated caregiver may end up being approved as a *kinship foster parent*. While terms like “foster care” and “ACS” are probably familiar to most families, concepts like “direct placement” and “KinGAP,”²⁴ a permanency option for children in kinship foster care, are more opaque. By the same token, caregivers in informal arrangements are unlikely to apprehend the finer distinctions between custody, guardianship, and other arrangements. Kinship caregivers within the foster care system and those raising children outside of the system must sort through their legal options under stressful, time-pressured conditions that are highly dependent on the actions of biological parents and child welfare decision-makers. Ideally, a caregiver living in public housing would understand that he or she may need to present an order of custody or guardianship to add the child to her lease and avoid eviction threats. Caregivers who agree to informal arrangements should know that, while they have a right to enroll the child in school, they may be unable to access certain healthcare services. Caregivers should also be aware that they only have a short period of time to challenge a child’s foster care placement with unrelated foster parents. Regrettably, few caregivers have access to such critical information.

MFY operates the only legal services program in New York City dedicated to serving low-income, kinship families within and beyond the formal foster care system. Caregivers who are unable to retain a lawyer are not automatically entitled to free legal assistance under New York law. Section 722 of the Judiciary Law sets forth the plan for appointment of counsel in certain Family Court and criminal proceedings. That plan excludes many of the matters in which kinship caregivers need legal counsel. Caregivers who are unable to receive assistance from MFY rely on a patchwork of online resources, advice gleaned from the rotating cast of caseworkers assigned to their case, and information presented by gatekeepers within the court system. Unfortunately, caregivers often receive incomplete or incorrect information about issues of critical importance to their families on matters as essential as housing, education, and public benefits. Clients routinely receive erroneous or incomplete information from staff at the Human Resources Administration and other City agencies. Caregivers’ experiences within the Family Courts raise additional concerns and impose significant barriers to litigants who must navigate the system without access to counsel.

Many Family Court clerks across the five boroughs often impose divergent – and legally improper – requirements on caregiver petitions. MFY clients have reported that in Staten Island, for example, grandparent caregivers filing *pro se* are prevented from petitioning for guardianship of children in their care and are only permitted to seek orders of custody. In contrast, Bronx-based clients have explained that caregivers who are not grandparents are unable to file petitions for orders of custody. These restrictions violate the law and place certain children at an economic disadvantage in both the short-term and long-term, including access to federal financial aid for higher education.

Clients and individual clerks have advised MFY of clerk’s office policies that restrict petitioners’ rights to choose whether to file a petition to become a child’s custodian or guardian.

Not only do these clerk-made policies represent an impermissible exercise of discretion, there is no legal basis for differentiating between caregivers in this way. While legal custodians and guardians have different rights with respect to their ability to consent to certain medical procedures, employment opportunities, and other engagements with third parties,²⁵ most caregivers will not experience a difference when attending to a child’s day-to-day needs. The Fourth Department explained in *Allen v. Fiedler*, “Custody decrees and those appointing a legal guardian of the person create the same sort of relationship between the child ... and the person to whose care he [or she] is awarded.”²⁶ Likewise, Family Court Act § 657 and Domestic Relations Law § 74 make clear that custodians and guardians exercise the same authority to enroll the child in school, secure health insurance, and provide for a wide range of other services. Courthouse clerks lack authority to offer legal advice to petitioning caregivers on these nuanced distinctions that arise outside of the normal course of caregiving.

The Family Court Act requires courthouse clerks to “give petition forms to any person requesting them”²⁷ and prohibits clerks from “prevent[ing] any person who wishes to file a petition from having such petition filed with the court immediately.”²⁸ The Practice Commentaries to Family Court Act § 216-c(c) emphasize the strength of this prohibition. They note that even if the alleged facts “do not bring the situation within the court’s jurisdiction . . . the clerk has been divested of even this residuum of discretion.”²⁹ Nevertheless, both clients and individual clerks have advised MFY of clerk’s office policies regarding custody and guardianship petitions that restrict caregivers’ ability to choose between these legal options.

2. Incomplete Information from the Administration for Children’s Services

Relatives who become caregivers when children are removed from their parents’ care by the Administration for Children’s Services (“ACS”) face different but related challenges in selecting the legal relationship most appropriate for their families. As a starting point, Family Court Act § 1017(1) provides:

[W]hen the court determines that a child must be removed from his or her home ... the court shall direct the local commissioner of social services to conduct an immediate investigation to locate any non-respondent parent of the child and any relatives of the child, including all of the child's grandparents, all suitable relatives identified by any respondent parent or any non-respondent parent and any relative identified by a child over the age of five as a relative who plays or has played a significant positive role in his or her life, and inform them of the pendency of the proceeding and of the opportunity for becoming foster parents or for seeking custody or care of the child, and that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful.

Directives from the Office of Children and Family Services require ACS to distribute the brochures entitled, “Handbook for Relatives Raising Children” and “Know Your Options: Relatives Caring for Children,” to potential relative caregivers.³⁰ These brochures describe the various options – direct placement in the caregiver’s home, placement with an order of custody or guardianship or certification as a kinship foster parent – available to caregivers under FCA § 1017(2)(a). However, no enforcement mechanisms exist to ensure that ACS attempts to locate relatives or that relatives actually receive these brochures, and ACS has no system in place to guarantee that prospective caregivers actually understand their contents.

The removal of a child from his or her parents is a traumatic event for all persons involved. Naturally, caregivers who must make swift, and often unanticipated, decisions about caring for a child under emergency circumstances are not well positioned to evaluate which type of legal relationship would be best for their families. This is especially true since the child’s ability to return to his or her biological parents is unknown at the outset of the removal, and the permanency planning goal for a child may change over time.

MFY clients report that, during their first contact with ACS caseworkers, the agency simply asked whether the caregiver wanted “custody” or “kinship,” without providing a detailed explanation of the distinctions between the two. Some caregivers may choose “custody” because that term sounds more colloquial and recognizable than “kinship.” Others may elect to become kinship foster parents because they associate it with the desperately-needed foster care payments that are associated with raising a child in the child welfare system, without knowing that financial support is available for informal caregivers or understanding the invasive supervision that accompanies that choice as well.³¹

While it is true that concerns over safety planning and shelter are priorities for children who end up in kinship care arrangements, child welfare and anti-poverty advocates must also examine the numerous ways in which gatekeepers within the courts and city agencies impact the long-term opportunities available to children who desperately need more, not fewer, social services and forms of educational support.

II. KINSHIP CARE AND LONG-TERM IMPACT ON EDUCATION ACCESS

A. Educational Challenges for Kinship Care Children

Kinship families in New York City often live in neighborhoods with high concentrations of “deep poverty,” households with incomes of less than 50% of the federal poverty level.³² These children have also experienced significant psychological trauma associated with the loss of their primary caregivers and the circumstances surrounding their entry into kinship care. Poverty and adverse childhood experiences make children in kinship care arrangements particularly vulnerable to a range of negative health, criminal justice, and educational outcomes.³³ Yet, the real and pressing needs of children in kinship care are often overlooked in discussions concerning the so-called “achievement gap,” that is, the educational manifestations of racial and class inequality.³⁴ Education reformers acknowledge that disparities in areas such as household income, parental education, and access to healthcare contribute to the high school dropout rates and low college enrollment in many neighborhoods.”³⁵ However, just as the stress and financial obligations of caregiving itself can have a deleterious effect on the health of caregivers,³⁶ the caregiving arrangement can create a host of educational challenges for children.



As a preliminary matter, school-aged children who enter into kinship care often have to relocate to a new school. Although New York City Department of Education Chancellor’s Regulation A-101 § I.A.17 allows children to remain in their home school for the remainder of the academic year following their removal from home, this can create logistical hurdles for the caregiver and child. Chancellor’s Regulation A-101 § VI provides that children can and should be enrolled in the caregiver’s zoned school. However, our clients frequently report that school officials require caregivers to present court orders of custody or guardianship before registering the child. These school enrollment problems, coupled with the adverse childhood experiences many children in kinship care face, pose serious barriers to their educational attainment. Assuming these children successfully overcome their educational challenges, they will face significant obstacles in their ability to apply for and receive higher education funding to advance their education.

B. Free Application for Federal Student Aid and Postsecondary Education Access

Postsecondary education is prohibitively expensive for indigent families. The average cost of in-state tuition and fees for New York’s four-year public colleges and universities, not including room and board, was approximately \$7,000 in 2013.³⁷ That figure increases to \$34,008 for New York’s private four-year colleges and universities.³⁸ For State University of New York (“SUNY”) schools, the less than \$6,000 average tuition for in-state students

represents only a fraction of the actual expense.³⁹ When housing, books, supplies, and other required fees are included, the minimum cost for one school year amounts to more than \$22,000.⁴⁰ While the cost for students attending City University of New York (“CUNY”) schools is somewhat lower, the annual expense, exclusive of housing, is an estimated \$7,110.⁴¹ For students living away from home, the total soars to \$19,858⁴² – about 400% of the annual income of a family surviving on public assistance.⁴³

Federal financial aid⁴⁴ and school-based scholarships offer the best hope for children in indigent families to finance higher education. To establish eligibility for federal financial aid, prospective students must complete the Free Application for Federal Student Aid, better known as the “FAFSA.” The FAFSA is “the main application that colleges and universities in the United States [use] to determine a student’s [Expected Family Contribution] and, on that basis, how much should be awarded in grants, work-study funds and loans.”⁴⁵ For New York students hoping to attend in-state schools, the FAFSA defines eligibility for New York State’s Tuition Assistance Program (“TAP”). Schools also rely on FAFSA data to operate “opportunity programs” at CUNY, SUNY, and New York State’s private schools.⁴⁶ These programs support academically and economically disadvantaged students who might otherwise be denied college admission.⁴⁷

Completing the FAFSA is the first and most important step in the federal student aid process. A student must submit a completed FAFSA form between January 1 and June 30 of the same year he or she plans to enroll in college.⁴⁸ However, students able to apply soon after January 1 enjoy a number of advantages when seeking individual or state-administered aid programs.⁴⁹ After submitting the FAFSA, the U.S. Department of Education compiles a “Student Aid Report,” which “summarizes all the information provided on [the student’s] FAFSA and will usually contain [the student’s] Expected Family Contribution, the number used in determining [the student’s] eligibility for federal student aid.”⁵⁰ The colleges listed on the student’s FAFSA, institutions that have already offered admission, also receive the Student Aid Report and use it in creating their award packages for the student.⁵¹ With this financial aid information in place, the student can select from among the different award packages and decide which college to attend.⁵²

Unfortunately, completing the FAFSA is no simple task. The more than one hundred complex questions on the form are confusing to many, if not most, families. In fact, “anecdotal evidence suggests that many high school graduates are so daunted by the FAFSA that they even

Elizabeth Hughes, Head Counselor for 12th grade students at the Frederick Douglass Academy II, offered the following example:

A low-income prospective college student lives with her grandmother, a senior citizen with age- and illness-related impairments. The child’s father is uninvolved in her life. Her mother, who lives on the streets and struggles with drug addiction, has not been her primary caregiver for years. Nevertheless, this child’s informal kinship arrangement makes her “dependent” on her parents from a financial aid perspective. The FAFSA requires her to provide financial information for her father or mother, or else she is ineligible to receive federal financial aid.

give up applying to college.”⁵³ Mark Kantrowitz, college financial aid expert and publisher of FinAid.org and other online research tools, recently collected data on low-income aid applicants from the National Postsecondary Student Aid Study, developed by the National Center for Education Statistics at the U.S. Department of Education. His research showed that “nearly one quarter of the 6.5 million students eligible for Pell Grants failed to apply for the money.”⁵⁴ Ideally, students should receive guidance from their school guidance counselor or college advisor. However, the availability of such resources at schools is highly variable and is largely based on the discretion of the individual school’s principal and budget.⁵⁵ While some well-financed schools have full-time professional college guidance counselors, funded through parent-teacher associations or alternative funds, others rely on untrained teachers to act as part-time counselors and advisors. There is a severe shortage of these counselors in under-resourced New York City schools. The largest public schools operate with one counselor assigned to approximately 455 students.⁵⁶

The questions asked on the FAFSA indicate that the form is designed with the traditional family in mind.

Students from middle-class families turn to their parents for assistance with the FAFSA. However, for low-income, kinship care families, caregivers often have little or no experience navigating the college admission and financing process. Anecdotal evidence gathered from

MFY’s work showed that less than 5% of our caregivers had completed four-year college in the United States or abroad. Caregivers’ lack of familiarity with the college admission and funding process is particularly problematic since the FAFSA requires information often unavailable to many applicants in kinship care.

The FAFSA requires applicants to supply, among other things, Social Security numbers, tax records, information on savings and checking account balances, and assets of the applicant’s “parents” to calculate the Expected Family Contribution.⁵⁷ For children who have been abandoned by their biological parents, this information will be virtually impossible to gather. Without calculation of the Expected Family Contribution, the student is barred from *all aid* except unsubsidized loans, Direct PLUS loans, and TEACH grants.⁵⁸ Not only will these students be cut off from all need-based grants or subsidized assistance, these low-income students will most likely be ineligible for even unsubsidized loans, which are credit-based and inaccessible to borrowers with negative credit histories.⁵⁹

C. “Dependent” and “Independent” Status in Financial Aid Assessment

In many respects, the college enrollment of a low-income child in kinship care hinges on whether he or she will be categorized “dependent” or “independent” on the FAFSA. The Department of Education categorizes applicants as either “dependent” or “independent” according to specific, enumerated criteria. The applicant is automatically considered “independent” if the applicant indicates that he or she meets any of the following criteria:

- 24 years or older;
- Married;
- Working on a master’s or doctorate degree;
- Currently serving on active duty in the U.S. armed forces;
- Veteran;
- Has children or dependents and is providing for more than 50% of their financial support;
- Orphaned;
- In foster care, or “a ward of the court, at any time after age 13”;
- Emancipated minor or was or is in a legal guardianship; or
- Homeless.⁶⁰

If the applicant is considered “dependent,” he or she must provide parental financial information while “independent” students are exempt from this requirement.⁶¹ The questions asked on the FAFSA indicate that the form is designed with the traditional family in mind. An applicant who lives with one or two biological or adoptive parents is “dependent.”⁶² While these assumptions make sense for many applicants, they pose a major challenge for applicants from kinship families in which a student lives with a non-parent caretaker and may have no contact with either parent and/or lack access to his or her biological parents’ financial information. The FAFSA offers few exceptions to the parental data reporting requirements. That the applicant does not live with his or her parents or is not claimed by the parents on tax forms does not render the applicant an “independent” student.⁶³

1. Children in Informal Care Arrangements are “Dependent” for FAFSA Purposes

As stated above, the largest number of kinship caregivers operates informally. These private arrangements involve no court order or other document legally recognizing the familial arrangement. This means that many applicants in informal care will be regarded as “dependent” and must provide parental information that they likely cannot obtain. This predicament further reflects the consequences when caseworkers and courts fail to provide accurate and comprehensive information to a relative offering kinship care. For example, an ACS caseworker who does not explain the distinctions between direct placement and foster care status leaves a caregiving aunt unprepared to address the distinctions made in the FAFSA and unaware of the financial benefits foster children have with respect to financial aid. A courthouse clerk who

erroneously advises a caregiving grandmother that she can only seek custody, not guardianship, sentences the family to struggle through the “dependency override” process.

2. FAFSA Distinguishes Between Children Raised by Legal Guardians and Those Cared for by Legal Custodians

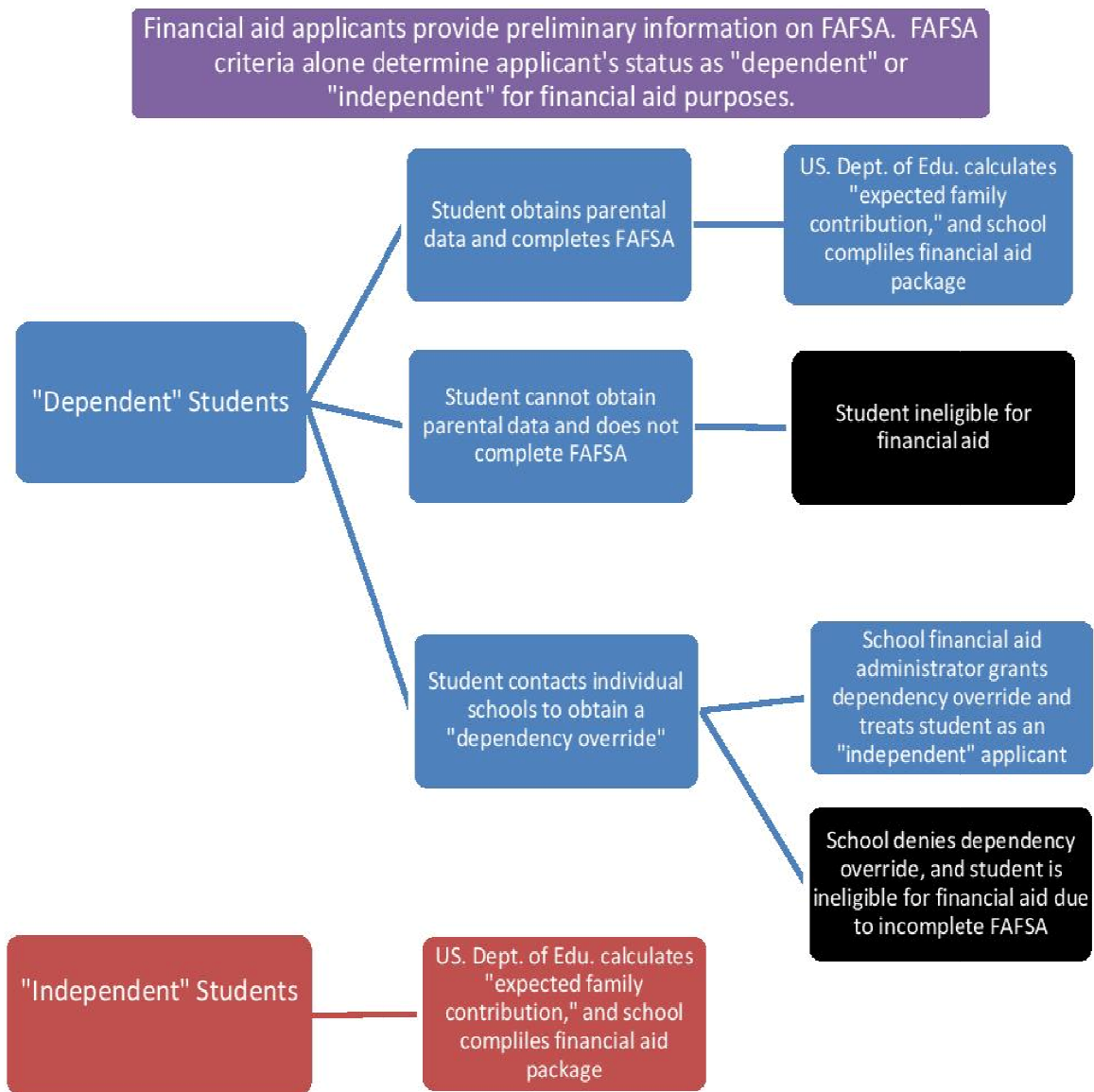
FAFSA defines a legal guardianship as “a relationship created by court order, through which the court appoints an individual other than a minor’s parent to take care of the minor.”⁶⁴ The 2013-2014 Federal Student Aid Handbook further explains that both emancipated minors and legal guardianships must be “adjudicated by a court of competent jurisdiction in the state of the students’ legal residence at the time of the adjudication.”⁶⁵ In other words, the guardianship has to be legally established by a court, and the applicant must furnish a copy of the relevant court order to a college financial aid administrator. Such an applicant will be exempt from providing parental information. Moreover, the applicant is not required to provide the guardian’s financial information because a guardian is not a “parent.” It follows, then, that a student applying for financial aid under these circumstances will not have a significant Expected Family Contribution and will be eligible for substantial need-based aid.

FAFSA’s definition of “parents” is largely inconsistent with the lived experiences of low-income children in kinship care arrangements. For purposes of FAFSA, parents only include “biological parents, legally adoptive parents, or stepparents.”⁶⁶ Legal guardians, legal custodians, foster parents, and informal caregivers are not encompassed within this definition. Thus, the student is not required to supply financial data for the great-aunt or older sibling who serves as his or her *de facto* parent, but he or she is required to provide financial information for his or her biological parents, regardless of the length of time the student has lived in kinship care. Parental data is difficult, if not impossible, for many children in kinship families to obtain, resulting in insurmountable hurdles to overcome their “dependent” status.

3. Children in Kinship Foster Care are Considered “Independent” Under FAFSA

Applicants in foster care are deemed “independent” from their biological parents for FAFSA purposes. These children in the foster care system are exempt from the parental income reporting requirements. Moreover, they are also eligible for a number of targeted financial aid programs.⁶⁷ Children in foster care face many challenges, academic and otherwise. In this narrow area of financial aid eligibility, however, they may have advantages that are unavailable to children in kinship care outside of the child welfare system.

NAVIGATING THE DEPENDENCY OVERRIDE PROCESS



D. Without a Dependency Override, Many Children in Kinship Care Are Ineligible for Financial Aid

The “dependency override” process allows an applicant who is technically a “dependent” student under the FAFSA rules to be treated like an “independent” student, exempt from submitting the FAFSA with parental financial information.⁶⁸ Section 480(d)(1)(I) of the Higher Education Act authorizes the dependency override process by including the following within the definition of an independent student: “a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.”⁶⁹

Although these students will be allowed to describe special circumstances that should allow them to submit the application without providing parental information, they must immediately contact the financial aid administrators of the colleges to which they are applying for dependency overrides. Based on this information, the financial aid administrator determines whether the applicant should be deemed independent and have his or her Expected Family Contribution calculated without parental information. If the financial aid administrator deems the student’s submission sufficient, the school will contact “the staff at FAFSA and manually override [the applicant’s] dependency status so [his or her] form can be processed without parental information,” essentially re-categorizing the applicant as an independent student.⁷⁰ Once the financial aid administrator makes a decision, the student has no right to appeal an adverse determination to the U.S. Department of Education.⁷¹ Thus, financial aid administrators exercise broad discretion⁷² within a system that, for many kinship families, is virtually impossible to navigate. For these students, assistance may be difficult to obtain even from the staff of financial aid administrators, who are often uninformed about the distinction between legal guardianship, custody, and other caregiving arrangements.⁷³ Moreover, some college aid officers do not know that third-party custody is a legal option.⁷⁴ Consequently, they are likely to misinform students about the existing requirements for dependency overrides, based on their understanding of how custody is awarded to biological parents. Perhaps not surprisingly, only “2% of undergraduate students become independent through dependency overrides.”⁷⁵

Special circumstances supporting a dependency override include:

- Parental incarceration
- Some domestic violence
- Parents whose whereabouts are unknown
- The applicant is 22 or is 23 years of age and either homeless or at the risk of being homeless while self-supporting.

FAFSA applicants seeking aid to attend schools within the City University of New York and State University of New York systems face inconsistent and opaque systems for establishing their “dependent” or “independent” status. As set forth above, financial aid administrators at individual schools exercise broad discretion to grant or deny a student’s “dependency override,” the only process through which a student living in a nontraditional family can be deemed “independent” and exempt from reporting his or her parent’s financial information. Unfortunately, few CUNY or SUNY schools offer information about the dependency assessment or dependency override process to the public.

Dependency Overrides at CUNY Schools	Dependency Overrides at SUNY Schools
<p>MFY conducted a limited survey of financial aid offices at CUNY institutions, which revealed that those schools adhere to the FAFSA’s criteria for establishing a student’s dependency status. Children with legal guardians or foster parents are “independent.” Financial aid administrators at individual schools exercise discretion with respect to the dependency status of children with nonparent custodians.</p> <p>The Borough of Manhattan Community College and Brooklyn College require students with nonparent custodians – but not legal guardians – to secure dependency overrides.^a Our outreach to these and other schools revealed that a number of financial aid officials were unaware of the legal similarities between nonparent custody and guardianship.</p> <p>Bronx Community College and Hunter College list specific factors that will likely warrant an override, such as parental abandonment, severe estrangement, or other situations outside of the student’s control that result in loss of contact with parents.^b Medgar Evers College presumes that an applicant is unable to contact his or her biological parents only if one custodial parent is dead and the applicant has not had contact with the other parent for over two years. In other areas, schools offer more vague descriptions of the circumstances that may warrant an override.^c Medgar Evers includes abuse, whether physical, emotional, or substance related. Brooklyn College and New York City College of Technology provide no online information regarding which situations will justify a dependency override, leaving kin-care families unfamiliar with the application process with no assistance to establish the applicant’s independent status.^d</p>	<p>MFY’s survey confirmed that, like their CUNY counterparts, SUNY schools vary significantly with regard to the information they provide about dependency status and the dependency override process. The State University of New York College of Environmental Science and Forestry, for example, only grants a dependency override in extremely limited circumstances where there has been abandonment or abuse by the parents. The school provides no online definitions of actions constituting “abandonment” or other circumstances that would warrant a dependency override.^e The College at Brockport, on the other hand, explains that an override may be appropriate “where there is an involuntary separation from the family or if other extraordinary circumstances exist.” It goes on to state, “An involuntary dissolution occurs when a student is separated from the family for reasons other than his/her or their parents’ own choice.”^f Finger Lakes Community College offers no examples of “unusual circumstances” on its website.^g</p> <p>Rockland Community College requires students with legal guardians or custodians to obtain dependency overrides. In a discussion about this distinction, the financial aid office explained that the school will be more likely to grant a dependency override in the guardianship context, but that applicants in custodian arrangements would be assessed on a case-by-case basis.^h Jamestown Community College is one of the few schools that provides online instructions for students with legal custodians on evidence to submit in support of their dependency override request.ⁱ</p>

III. POLICY RECOMMENDATIONS

Many caregiver clients seek legal assistance to prevent current or imminent crises that impact family stability. While at first blush, problems with FAFSA and higher education access may appear to be a less significant concern for many low-income caregivers, advocates do these families a disservice by focusing exclusively on short-term care crises at the expense of addressing the broad spectrum of social, financial, and educational challenges kinship families face. Given the demographics of kinship care in New York City, removing barriers to postsecondary education must become an essential component of a broader equality and educational access agenda. To that end, we offer the following policy recommendations:

- First, the Office of Court Administration and the New York State Court Officer Academy, authorized by New York State Judiciary Law § 219-b, should educate nonjudicial personnel, particularly the front line clerks in Family Court “self-help” rooms, about 1) the prohibitions against clerk interference with petitioner filings and 2) distinctions between custody and guardianship, including those mentioned in this report.
- Second, the Office of Children and Family Services should revise its informational brochure, “Having a Voice and a Choice,” to include information about the long-term educational consequences of different caregiver choices for child placement. It must ensure that front-line caseworkers actually provide this information to prospective caregivers.
- Third, the Office of Postsecondary Readiness at the New York City Department of Education should provide informational materials to middle and high school students about the financial aid application process, including the dependency override process.
- Fourth, CUNY and SUNY schools should generate uniform dependency override criteria so that applicants can access clear and consistent guidelines on the requirements early in the financial aid application process.
- Finally, the New York City Department of Education should increase funding for hiring and training guidance counselors, particularly in high poverty school districts. These guidance counselors should be made aware of resources that are available to both caregivers and students from kinship families seeking assistance with financial aid, including MFY Legal Services, Inc., the Feerick Center for Social Justice, Henry Street Settlement, and New Visions for Public School.

ENDNOTES

¹ MARY BISSELL & JENNIFER MILLER, THE ANNIE E. CASEY FOUNDATION, STEPPING UP FOR KIDS: POLICY REPORT 3 (2012), available at <http://www.aecf.org/m/resourcedoc/AECF-SteppingUpForKids-2012.pdf>.

² NYC.gov, Profile of General Population and Housing Characteristics, www.nyc.gov/html/dcp/download/census/census2010/t_sf1_dp_nyc.xlsx (last visited June 9, 2014); see also NYC.gov, NYC Census Factfinder, <http://maps.nyc.gov/census> (last visited June 9, 2014).

³ NYC Administration for Children's Services, Statistics and Links, http://www.nyc.gov/html/acs/html/statistics/statistics_links.shtml (last visited June 2, 2014).

⁴ BISSELL & MILLER, *supra* note 1.

⁵ See Marc Winokur, et al., *Kinship Care for the Safety, Permanency, and Well-being of Children Removed from the Home for Maltreatment: A Systematic Review*, CAMPBELL SYSTEMATIC REVIEWS, March 2, 2014, http://campbellcollaboration.org/lib/download/3243/Winokur_Kinship_Care_Review.pdf; see also Eun Koh, et al., *What explains instability in foster care? Comparison of a matched sample of children with stable and unstable placements*, 37 CHILDREN AND YOUTH SERVICES REVIEW 36–45 (2014).

⁶ Maternal relatives often serve as the first resource for children in need of care. However, in MFY's experience, the Administration for Children's Services and subcontracting foster care agencies often fail to adhere to the kinship placement requirements when children are removed during abuse and neglect investigations. *Kinship Caregiver Services: New York City Council Committee on General Welfare* (NY 2013) (Testimony of Barbara Graves-Poller, supervising attorney, MFY Legal Services, Inc.), available at <http://www.mfy.org/wp-content/uploads/Kinship-Caregiver-Services-May-8-2014.pdf>.

⁷ RACHEL DUNIFON & CATHERINE J. TAYLOR, CORNELL UNIVERSITY COOPERATIVE EXTENSION, CHARACTERISTICS OF RELATIVE CAREGIVERS AND CHILDREN IN THEIR CARE IN NEW YORK STATE 1 (2004), available at <http://www.human.cornell.edu/pam/outreach/parenting/research/upload/Characteristics-20of-20Relative-20Caregivers-20and-20Children-20in-20Their-20Care.pdf>.

⁸ BISSELL & MILLER, *supra* note 1, at 4.

⁹ *Id.*

¹⁰ GRETCHEN LIVINGSTON, PEW RESEARCH CENTER, AT GRANDMOTHER'S HOUSE WE STAY 2 (Sep. 4, 2013), available at http://www.pewsocialtrends.org/files/2013/09/grandparents_report_final_2013.pdf.

¹¹ DUNIFON & TAYLOR, *supra* note 7, at 2.

¹² *Id.*

¹³ LIVINGSTON, *supra* note 10, at 2.

¹⁴ U.S. GOV. ACC'T. OFFICE, GAO NO. 12-2, TANF AND CHILD WELFARE PROGRAMS: INCREASED DATA SHARING COULD IMPROVE ACCESS TO BENEFITS AND SERVICES 43 (Oct. 2011), available at <http://www.gao.gov/assets/590/585649.pdf>.

¹⁵ NEW YORK CITY KINCARE TASK FORCE, REMOVING BARRIERS TO SUCCESSFUL KIN CAREGIVING 2 (June 2009), available at <http://www.mfy.org/wp-content/uploads/reports/Removing-Barriers.pdf>.

¹⁶ *Id.*

¹⁷ In 2011, the citywide statistics on entry into the foster care system were as follows: Brooklyn, 1,685 placements within a population of 2,504,700 residents; Bronx, 1,739 placements within a population of 1,385,108 residents; Queens, 928 placements within a population of 1,585,873 residents; Manhattan, 915 placements within a population of 2,230,722 residents; Staten Island, 370 placements within a population of 468,730. Citizens' Committee for Children of New York, Keeping Track Online: Foster Care Placements, <http://data.ccnnewyork.org/data/table/27/foster-care-placements#27/47/9/1/u> (last visited June 2, 2014); NYC.gov, Population – New York City Department of City Planning, <http://www.nyc.gov/html/dcp/html/census/popcur.shtml> (last visited June 2, 2014).

¹⁸ ICPHusa.org, Charts and Graphics: Educational Attainment in the Bronx, <http://www.icphusa.org/index.asp?page=17&asset=177> (last visited June 2, 2014).

¹⁹ CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, CONCENTRATED POVERTY IN NEW YORK CITY 3, 5 (April 2012), available at www.ccnnewyork.org/wp-content/publications/CCCReport.ConcentratedPoverty.April-2012.pdf.

²⁰ NEW YORK UNIVERSITY FURMAN CENTER, STATE OF THE CITY’S HOUSING & NEIGHBORHOODS IN 2013, 60-61 (May 2014), *available at* <http://furmancenter.org/research/sonychan> (last visited June 6, 2014).

²¹ ICPHusa.org, Charts and Graphics: Educational Attainment in Brooklyn, <http://www.icphusa.org/index.asp?page=17&asset=158&type=10> (last visited June 2, 2014).

²² *See* STATE OF THE CITY’S HOUSING & NEIGHBORHOODS, *supra* note 20, at 80.

²³ CONCENTRATED POVERTY, *supra* note 19, at 3, 5.

²⁴ KinGAP refers to the Kinship Guardianship Assistance Program, which is designed to support permanent placements for foster children with relatives to whom they are related by blood, marriage, or adoption. The program provides financial support – similar to the foster care maintenance payments that foster parents receive – and medical coverage for the children. Fully certified or approved kinship foster parents whose foster children have been placed with them for six months or more may be eligible. For more information, *see* NEW YORK OFFICE OF CHILDREN AND FAMILY SERVICES, KNOW YOUR PERMANENCY OPTIONS: THE KINSHIP GUARDIANSHIP ASSISTANCE PROGRAM, *available at* <http://ocfs.ny.gov/main/publications/Pub5108.pdf>.

²⁵ While custody and guardianship provide similar relief to most caregivers, procedural differences in custody and guardianship actions may make one option more viable, depending on a family’s circumstances. Unlike custody proceedings, guardianship proceedings require criminal background checks and fingerprinting for the individual seeking guardianship as well as any other person over 18 in the household. Guardianship proceedings also require such persons to submit to the New York Statewide Center Register for Child Abuse and Maltreatment. Additionally, while the required recipients of service of process is generally the same for both custody and guardianships proceedings, the court may dispense with service to parents who have abandoned the child in guardianship proceedings. N.Y. Surrogate’s Ct. Procedure § 1705(2). Custody proceedings, on the other hand, lack such express statutory authority.

²⁶ 96 A.D.3d 1682, 1684, 947 N.Y.S.2d 863, 866 (App. Div. 4th Dep’t 2012), *quoting* Restatement [Second] of Conflict of Laws, § 79 Custody of the Person, Comment *d*.

²⁷ N.Y. Fam. Ct. Act § 216-b.

²⁸ N.Y. Fam. Ct. Act § 216-c.

²⁹ Sobie, Practice Commentary, McKinney’s Cons Laws of NY, 2012 Electronic Update, Fam. Ct. Act § 216-c.

³⁰ *See* NANCY W. MARTINEZ, OFFICE OF CHILDREN & FAMILY SERVICES, 09-OCFS-ADM-04, HANDBOOK FOR RELATIVES RAISING CHILDREN (Feb. 9, 2009); NANCY W. MARTINEZ, OFFICE OF CHILDREN & FAMILY SERVICES, 10-OCFS-INF-03, NEW BROCHURE: “KNOW YOUR OPTIONS: RELATIVES CARING FOR CHILDREN” (May 27, 2010).

³¹ ACS workers are authorized to remove children from their homes without a court order only when they are in “imminent danger” of abuse or neglect. In other words, ACS workers are limited to using this power in emergency situations, where there is not enough time to get a court order. CHILD WELFARE ORGANIZING PROJECT, THE SURVIVAL GUIDE TO THE NYC CHILD WELFARE SYSTEM 25 (2007), *available at* <http://cwop.org/documents/survivalguide2007english.pdf>. However, ACS has largely abused this power and even in response to a federal lawsuit, they even “admitted that its workers use this power routinely, whether there really is an emergency or not.” Child Welfare Organizing Project, Abuse of the Emergency Removal Power, <http://cwop.org/issues/abuse-of-the-emergency-removal-power/> (last visited June 9, 2014); *see Tenenbaum v. Williams* 193 F. 3d 581 (2d Cir. 1999). In many cases where therapy, child care, or related services for the caregiver would have sufficed, ACS instead removed the children and placed them in the foster care system. For more information on ACS intrusions in the home, you may visit the Child Welfare Organizing Project’s website at <http://cwop.org/>.

³² Any New York City family that survives on public assistance payments alone is, by definition, a household in “deep poverty.” According to the 2014 federal poverty guidelines, that amounts to an annual income of less than \$12,000 for a family of four. *See* U.S. Department of Health & Human Services, 2014 Poverty Guidelines, <http://aspe.hhs.gov/poverty/14poverty.cfm>. At current levels, the cash assistance available to a family of four living on public assistance in New York City equals \$433 per month or \$5,196 each year. *See* NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, TANF STATE PLAN 2012-2014, Attachment E, *available at* <http://otda.ny.gov/policy/tanf/TANF2012.pdf>.

³³ A recent survey of students in California schools revealed that children in foster care had “the highest dropout rate [] and the lowest graduation rate, even when compared with the other at-risk student groups of low-SES [socioeconomic status] students, English learners, and students with disabilities.” VANESSA BARRAT AND BETHANN BERLINER, THE INVISIBLE ACHIEVEMENT GAP: EDUCATION OUTCOMES OF STUDENTS IN FOSTER CARE IN CALIFORNIA’S PUBLIC SCHOOLS, PART 1, 42, *available at* [21](http://www.stuartfoundation.org/docs/default-document-</p></div><div data-bbox=)

library/the-invisible-achievement-gap-report.pdf. The researchers urged educational policy makers to identify these children as “a distinct at-risk student population.” *Id.* Although only a subset of children in kinship care arrangements have been cared for in the foster care system, virtually all children in kinship care that MFY has worked with have experienced the disruptions in caregiving and other trauma that perpetuate the foster care achievement gap identified in the survey.

³⁴ Pedro Noguera, *The Achievement Gap and the Schools We Need*, IN MOTION MAGAZINE, Apr. 3, 2012, available at http://www.inmotionmagazine.com/er12/pn_achvgap.html.

³⁵ *Id.*

³⁶ See generally Sheila G. Bunch, et al., *Examining the Perceptions of Grandparents Who Parent in Formal and Informal Kinship Care*, 15 J. HUM. BEHAV. SOC. ENV'T. 93, 96 (2007) (“The consequences of caregiving can compromise the treatment of illness and chronic disease of custodial grandparents because they do not interrupt their caregiving responsibilities to seek health care for themselves”); Susan J. Kelley, et al., *Results of an Interdisciplinary Intervention to Improve the Psychosocial Well-Being and Physical Functioning of African-American Grandmothers Raising Grandchildren*, 5 J. INTERGENERATIONAL RELATIONSHIPS 45, 48 (2007) (“Health assessments by registered nurses indicate that 25% of the custodial grandmothers were diabetic, 54% had hypertension, and 80% met the criteria for obesity with many markedly obese. In addition, many of the grandmothers scored significantly worse in the areas of physical functioning, bodily pain, social functioning, role functioning, and general health than national norms on a standardized self-report measure of health.”).

³⁷ Sandy Baum & Jennifer Ma, *Trends in College Pricing 2013*, COLLEGE BOARD, 2013, at 17, available at <https://trends.collegeboard.org/sites/default/files/college-pricing-2013-full-report.pdf>.

³⁸ Kelsey Sheehy, *New York's 10 Most Expensive Colleges*, U.S. NEWS, Oct. 25, 2013, available at <http://www.usnews.com/education/best-colleges/the-short-list-college/articles/2013/10/25/new-yorks-10-most-expensive-private-colleges> (last visited June 2, 2014).

³⁹ State University of New York, Tuition and Fees, <http://www.suny.edu/smarttrack/tuition-and-fees> (last visited May 29, 2014).

⁴⁰ *Id.*

⁴¹ City University of New York, Tuitions and Fees, <http://www.cuny.edu/admissions/tuition-fees.html> (last visited June 2, 2014).

⁴² *Id.*

⁴³ This is based on the average public assistance payments received by a family of four living in New York City, *supra* note 32.

⁴⁴ The need-based grant programs generally applicable to undergraduate students are the Federal Pell Grant and Federal Supplemental Educational Opportunity Grants. Federal work-study is earned by the student by working while in college. Among the different loan programs are Federal Perkins Loans, William D. Ford Direct Subsidized and Unsubsidized Loans, Direct PLUS loans, and Direct Consolidation Loans. Grants and work-study do not have to be repaid; they are essentially free money. FED. STUDENT AID, U.S. DEP'T OF EDUC., FUNDING YOUR EDUCATION: 2012-2013 THE GUIDE TO FEDERAL STUDENT AID (2012), available at <http://studentaid.ed.gov/sites/default/files/2012-13-funding-your-education.pdf>.

⁴⁵ KIM NAUER, ET AL., CENTER FOR NEW YORK CITY AFFAIRS, CREATING COLLEGE READY COMMUNITIES 36 (Sept. 2013), available at http://www.newschool.edu/milano/nyc affairs/documents/CollegeReportwebresolution_001.pdf.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ FUNDING YOUR EDUCATION, *supra* note 44, at 4.

⁴⁹ *Id.*

⁵⁰ *Id.* at 15.

⁵¹ *Id.*

⁵² *Id.* at 16.

⁵³ CREATING COLLEGE READY COMMUNITIES, *supra* note 45, at 36.

⁵⁴ *Id.*

⁵⁵ *Id.* at 9.

⁵⁶ *Id.* at 30. “Nationwide, public school guidance counselors provide only an average of 38 minutes of college admissions advice per high school student.” *Id.* at 29-30. In New York City, the ratio was even bigger at 1 counselor for 493 students. *Id.* at 30.

⁵⁷ KIM NAUER & SANDRA SALMANS, CENTER FOR NEW YORK CITY AFFAIRS, FAFSA: THE HOW-TO GUIDE FOR HIGH SCHOOL STUDENTS (AND THE ADULTS WHO HELP THEM) 6 (Jan. 16, 2014), available at

<http://www.understandingfafsa.org/assets/FAFSA-final.pdf>; *see also* FED. STUDENT AID, U.S. DEP'T OF EDUC., FILLING OUT THE FAFSA: SPECIAL CIRCUMSTANCES, <http://studentaid.ed.gov/fafsa/filling-out#special-circumstances> (last visited June 2, 2014). Once schools receive the Student Aid Report containing the Expected Family Contribution, they subtract the Expected Family Contribution from the school's cost of attendance to determine the individual applicant's financial need and, consequently, their award packages. FUNDING YOUR EDUCATION, *supra* note 44, at 8.

⁵⁸ *Id.* at 6.

⁵⁹ *See, e.g.*, ParentPLUSLoan.com, PLUS Loan Credit Requirements – Credit Report, <http://www.parentplusloan.com/credit-report/> (last visited June 2, 2014).

⁶⁰ FUNDING YOUR EDUCATION, *supra* note 44, at 14; *see also* FED. STUDENT AID, U.S. DEP'T OF EDUC., FILLING OUT THE FAFSA: DEPENDENCY STATUS, <http://studentaid.ed.gov/fafsa/filling-out/dependency> (last visited June 2, 2014).

⁶¹ *Id.* at 13.

⁶² CREATING COLLEGE READY COMMUNITIES, *supra* note 45, at 37.

⁶³ FUNDING YOUR EDUCATION, *supra* note 44, at 15; *see also* DEPENDENCY STATUS, *supra* note 60.

⁶⁴ FED. STUDENT AID, U.S. DEP'T OF EDUC., *Glossary*, https://studentaid.ed.gov/glossary#letter_I (last visited June 2, 2014).

⁶⁵ FED. STUDENT AID, U.S. DEP'T OF EDUC., *2013-2014 Federal Student Aid Handbook with Active Index*, AVG-23 (2013), *available at* <https://ifap.ed.gov/fsahandbook/attachments/1314FSAHandbookCompleteActiveIndex.pdf>.

⁶⁶ CREATING COLLEGE READY COMMUNITIES, *supra* note 45, at 37.

⁶⁷ *See* OFFICE OF CHILDREN & FAMILY SERVICES, HAVING A VOICE AND A CHOICE: NEW YORK STATE HANDBOOK FOR RELATIVES RAISING CHILDREN 42 (Dec. 2009), *available at* <http://ocfs.ny.gov/main/publications/Pub5080.pdf> (“Older youth in foster care who are applying for college can apply for a scholarship from the federal Education and Training Voucher [ETV] program. This program was set up to help youth in foster care attend college or a training program. A youth may be eligible for up to \$5,000 a year, which can be used for tuition, books, supplies, fees, transportation, room and board, academic support, and even child care if the youth is a parent. Youth who are adopted from foster care after the age of 16 may be able to get a voucher. If youth received a voucher at age 21, they may be able to continue getting a voucher until they are 23. Youth should ask their caseworker how to apply for a voucher. For information, go to www.statevoucher.org and click on New York State.”).

⁶⁸ FAFSA: THE HOW-TO GUIDE, *supra* note 57, at 15.

⁶⁹ Higher Education Act of 1965, Pub. L. No. 89-329, Title IV, 480(d)(1)(I) (codified as amended at 20 U.S.C.A. § 1087vv (2008)), *available at* http://www.house.gov/legcoun/Comps/HEA65_CMD.pdf.

⁷⁰ FAFSA: THE HOW-TO GUIDE, *supra* note 57, at 15.

⁷¹ FED. STUDENT AID, U.S. DEP'T OF EDUC., FILLING OUT THE FAFSA: REPORTING PARENT INFORMATION, <https://studentaid.ed.gov/fafsa/filling-out#parent-info> (last visited June 2, 2014); SPECIAL CIRCUMSTANCES, *supra* note 57.

⁷² *See* Higher Education Act of 1965, Pub. L. No. 89-329, Title IV, 479A(a) (codified as amended at 20 U.S.C.A. § 1087tt (2008)) (“In general – Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of an individual eligible applicant with special circumstances”).

⁷³ *E.g.*, Telephone Call with Borough of Manhattan Community College Financial Aid Office (Mar. 26, 2014); Telephone Call with Bronx Community College Office of Financial Aid (Feb. 10, 2014); Telephone Call with Hunter College Financial Aid Office (Mar. 26, 2014) (notes on file with MFY Legal Services, Inc.).

⁷⁴ *Id.*

⁷⁵ Mark Kantrowitz, FinAid.org, The SmartStudent Guide to Financial Aid: Dependency Overrides, <http://www.finaid.org/educators/pj/dependencyoverrides.phtml> (last visited June 2, 2014).

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