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# Advocacy Outside "The Life"<sup>1</sup>: A Guide to Using Legal Services to Build a Public Systems Safety Net for Child Survivors of Commercial Sexual Exploitation

By Allison Green and Sarah Tomkins\*

## I. INTRODUCTION

Each year, an estimated 100,000 children are commercially sexually exploited within the United States.<sup>2</sup> Training for educators, law enforcement, and social service providers on this topic has substantially expanded within the last decade,<sup>3</sup> with a growing emphasis on the domestic scope of the problem.<sup>4</sup> Even over the course of writing this Article, the domestic commercial sexual exploitation of children ("CSEC") has become an increasingly hot topic within the legal services field and the public eye.<sup>5</sup> Despite such attention, there is currently no authoritative resource that lays out best practices for attorneys who represent the interests of commercially sexually exploited children in the juvenile justice and child welfare systems, either

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\* Ms. Green earned her bachelor's and Juris Doctor degrees from Georgetown University. Ms. Tomkins earned her bachelor's degree from Princeton University and her Juris Doctor from the University of the District of Columbia David A. Clarke School of Law. The authors of this Article have worked directly with system-involved youth who have been commercially sexually exploited, as a best interest guardian *ad litem* (GAL) attorney and a special education attorney, respectively. Some of the evidence in this Article is therefore anecdotal and based on the experience of the authors.

<sup>1</sup> "The Life" is a colloquial term used to describe the experience of engaging in commercial sexual acts. See, e.g., *Glossary of Trafficking Terms*, SHARED HOPE INT'L, <http://sharedhope.org/learn/traffickingterms/> (last visited Jan. 28, 2014); *The Life*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=the%20life> (last visited Jan. 28, 2014); see also *Voices in the Life*, NEV. SHAKESPEARE CO., <http://voicesinthelife.com/> (providing information about a play that includes monologues about commercial sexual exploitation); PROSTITUTION: LEAVING THE LIFE (Oprah Winfrey Network 2011), available at [http://www.huffingtonpost.com/2011/08/18/prostitution-leaving-the-\\_n\\_930545.html](http://www.huffingtonpost.com/2011/08/18/prostitution-leaving-the-_n_930545.html) (documenting the lives of sex workers in Cook County, Illinois).

<sup>2</sup> *Human Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview> (last visited Jan. 28, 2014).

<sup>3</sup> See generally U.S. DEP'T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS (2010), available at <http://www.justice.gov/psc/docs/natstrategyreport.pdf> (summarizing federal training funding and goals); *Commercial Sexual Exploitation of Children*, U.S. DEP'T JUST. OFF. JUV. JUST. PROGRAMS, [http://www.ojjdp.gov/programs/csec\\_program.html#ttap](http://www.ojjdp.gov/programs/csec_program.html#ttap) (last visited Mar. 15, 2014) (reporting current recipients of federal technical assistance and training funds).

<sup>4</sup> See Richard J. Estes, Professor, Univ. of Pa., Sch. of Soc. Policy & Practice, PowerPoint Presentation: Myths Associated with CSEC in North America, available at [http://www.sp2.upenn.edu/restes/Powerpoint%20Presentations/Myths\\_091008.pdf](http://www.sp2.upenn.edu/restes/Powerpoint%20Presentations/Myths_091008.pdf) (last visited Apr. 5, 2014) ("Increasingly, child sexual exploitation is gaining recognition as the most neglected form of child abuse in the U.S."); see also Gary Feuerberg, *Americans Largely Ignorant of Domestic Sex Trafficking*, EPOCH TIMES (Mar. 4, 2014), <http://www.theepochtimes.com/n3/541381-americans-largely-ignorant-of-domestic-child-sex-trafficking/> (noting that "[w]hen most Americans hear the term 'child trafficking,' they think that it only happens somewhere else" and recognizing the need for increased focus on issues of domestic human trafficking).

<sup>5</sup> Recent literature has been published on the topic of commercially sexually exploited youth since Fall 2013. See generally Patricia Leigh Brown, *A Court's All-Hands Approach Aids Girls Most at Risk*, N.Y. TIMES (Jan. 28, 2014), [http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html?\\_r=0](http://www.nytimes.com/2014/01/29/us/a-courts-all-hands-approach-aids-girls-most-at-risk.html?_r=0) (describing the "unusual collaboration between the judicial and social service systems" resulting in "a half dozen or so Girls Courts around the country[,] bringing "an all-hands-on-deck approach to the lives of vulnerable girls" that have been recruited as child prostitutes or have been identified as "at risk for involvement"); J. David McSwane, *The Stolen Ones*, HERALD TRIB. (Oct. 12, 2013), <http://thestolenones.heraldtribune.com/> (detailing the story of a seventeen-year-old girl in Florida who escaped her exploitation, only to be sent to a juvenile jail by her mother, concerned with her daughter's rehabilitation and "[l]acking resources and comprehensive laws" to help her recover); Elizabeth LaMura, *Sex Trafficking of Minors in the United States: State Legislative Response Models*, 33 CHILD. LEGAL RTS. J., Fall 2013, at 301 (noting the call to action in the United States in the past decade to address the issue of human trafficking); *NACC Call for Abstracts*, NAT'L ASS'N COUNSEL FOR CHILD. (Dec. 1, 2011), [http://www.naccchildlaw.org/events/event\\_details.asp?id=199284](http://www.naccchildlaw.org/events/event_details.asp?id=199284) (seeking submissions related to "Teen Prostitution" and "Sexual Exploitation" to incorporate into the NACC's 35th National Child Welfare, Juvenile, and Family Law Conference).

as stated interest attorneys, guardian *ad litem* (GAL)<sup>6</sup> attorneys acting in a child's best interest, or special education attorneys.<sup>7</sup> This Article is intended to begin that conversation; it is a primer inclusive of information, legal tools, and advocacy strategies to help move these challenging issues forward.

Part I of this Article provides a brief overview of the problem of the commercial sexual exploitation of children, including the basic framework of relevant federal law and currently available statistical data. Part II explores best practices for guardians *ad litem* representing sexually exploited children and provides a range of advocacy tactics available for professionals in this role. Part III of the Article discusses the educational impact of this exploitation on children, and suggests ways that parents, working in conjunction with special education attorneys, can ensure that these children receive appropriate, school-based services to which they are entitled. The Article concludes with recommendations for systemic advocacy and reform rooted in the authors' experiences working on individual cases and a review of current relevant literature.

## II. COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE UNITED STATES: AN OVERVIEW

The problem of commercial sexual exploitation of children and youth ("CSEC") goes by many names: human trafficking,<sup>8</sup> prostitution of children,<sup>9</sup> domestic minor sex trafficking,<sup>10</sup> or sexual slavery.<sup>11</sup> Regardless of the label, advocates must arm themselves with a basic understanding of the issue in order to be most effective. This section will review CSEC's definition in federal law as well as provide an overview of the epidemiology of domestic commercial sexual exploitation in the United States. This background will provide a foundation for framing clients' cases, educating other professionals working with sexually exploited children, and making requests for tailored services.

<sup>6</sup> Guardian *ad litem* is a Latin term which, literally translated, means guardian "for the lawsuit." *Ad Litem*, LEGAL INFO. INST., [http://www.law.cornell.edu/wex/ad\\_litem](http://www.law.cornell.edu/wex/ad_litem) (last visited Jan. 28, 2014). GALs are often appointed by the court to represent the best interests of a particular party in the case, typically a minor child. *Id.* In many jurisdictions (including the District of Columbia, where the authors practice), GALs are licensed attorneys, although some states permit lay volunteers to fulfill this role. NAT'L ASS'N OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES 10-11 (2001) [hereinafter NACC RECOMMENDATIONS], *available at*

[http://c.yimcdn.com/sites/www.naccchildlaw.org/resource/resmgr/docs/nacc\\_standards\\_and\\_recommend.pdf](http://c.yimcdn.com/sites/www.naccchildlaw.org/resource/resmgr/docs/nacc_standards_and_recommend.pdf). GALs may be contrasted to stated or expressed interest attorneys who advocate for the expressed wishes of their clients regardless of age or capacity. *Id.* at 13.

<sup>7</sup> Special education attorneys are attorneys who practice under the Individuals with Disabilities Education Act ("IDEA") and represent the parents of children with disabilities. *See* 20 U.S.C.A. §§ 1400-1474 (West 2014); *see also* *Special Education Lawyers: Do You Need One?*, NOLO LAW FOR ALL, <http://www.nolo.com/legal-encyclopedia/special-education-lawyers-29511.html> (last visited Jan. 28, 2014) (providing a definition of special education attorneys and special education practice); WRIGHTSLAW, [www.wrightslaw.com](http://www.wrightslaw.com) (last visited Jan. 28, 2014) (providing general information about special education law to parents, advocates, and the public). Special education attorneys may represent a parent at meetings where a school determines whether or not a child meets criteria to receive special education and related services (or is "eligible" for services), at a meeting where a plan is developed to address the impact of a child's disability on his or her educational performance (otherwise known as an Individualized Education Program or "IEP"), and at administrative due process hearings, or the litigation a parent may initiate under IDEA to receive the services a parent deems are needed by the child, if the school and parent disagree on services. *See* *Special Education Lawyers: Do You Need One?*, *supra*; WRIGHTSLAW, *supra*.

<sup>8</sup> INST. OF MED. OF THE NAT'L ACAD. OF SCIS., *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES I* (2013), *available at* [http://www.iom.edu/~media/Files/Report%20Files/2013/Sexual-Exploitation-Sex-Trafficking/sextraffickingminors\\_rb.pdf](http://www.iom.edu/~media/Files/Report%20Files/2013/Sexual-Exploitation-Sex-Trafficking/sextraffickingminors_rb.pdf).

<sup>9</sup> *The Prostitution of Children*, U.S. DEP'T JUST., <http://www.justice.gov/criminal/ceos/subjectareas/prostitution.html> (last visited Jan. 28, 2014).

<sup>10</sup> *Domestic Minor Sex Trafficking*, FLA. COUNCIL AGAINST SEXUAL VIOLENCE (May 2013), <http://www.fcasv.org/child-sexual-abuse/domestic-minor-sex-trafficking>.

<sup>11</sup> *Sex Slavery/Trafficking: Frequently Asked Questions*, SOROPTIMIST, <http://www.soroptimist.org/trafficking/faq.html> (last visited Jan. 28, 2014).

### A. Defining CSEC

Federal law provides a clear definition of commercial sexual exploitation of children through the Trafficking Victims Protection Act of 2000 (the "TVPA").<sup>12</sup> The TVPA defines "severe forms of trafficking in persons" to include any "sex trafficking in which a commercial sex act is induced by force, fraud, coercion, or in which the person induced to perform such act has not attained 18 years of age."<sup>13</sup> This definition does not require children to be sold or transported across international or domestic borders to qualify as human trafficking victims.<sup>14</sup>

The TVPA definition also explicitly protects children who may have "voluntarily" engaged with, or returned to, their trafficker. The law unequivocally encompasses all children who have engaged in commercial sex acts as commercially sexually exploited children, regardless of whether or not force, fraud, or coercion is specifically alleged. In the event that other professionals working with a child, such as teachers, clinicians, or the court suggest that a child has not been commercially exploited because the child "consented" to the exploitation, advocates should remind them that the TVPA's language includes all minors who have engaged in commercial sexual acts as *per se* victims of commercial sexual exploitation. Furthermore, there is no exception, even where a child has run to, or returned to, a perpetrator.<sup>15</sup>

### B. Understanding the Scope of the Problem

The United States lacks a comprehensive and accurate statistical picture of the problem of CSEC. This is due, at least in part, to some of the defining features of child commercial sexual exploitation and common patterns of victimization. First, perpetrators frequently move victims across geographic lines to reach customers in new markets, rendering state-by-state surveys difficult.<sup>16</sup> Even when CSEC youth interact with law enforcement, however, underreporting is widespread.<sup>17</sup> Indeed, "[t]he greatest challenge faced in the prosecution of domestic sex traffickers, those persons commonly known as "pimps," is removing the victims from their immediate environment long enough for them to realize they are in fact victims and do need help."<sup>18</sup> Victims may hesitate to disclose information about exploitation because of valid fears for their own safety or loyalties to the perpetrator developed through a process of traumatic bonding.<sup>19</sup>

<sup>12</sup> Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7102(9), (14) (West 2014).

<sup>13</sup> *Id.* While the TVPA contemplates protections for victims of labor trafficking, this Article will focus solely on the problem of commercial sexual exploitation. Likewise, the TVPA applies to adult survivors, but the instant discussion is limited to the specific needs of school-aged minors.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; see *What Is Sex Trafficking?*, SHARED HOPE INT'L, <http://sharedhope.org/learn/what-is-sex-trafficking/> (last visited Jan. 10, 2014).

<sup>16</sup> *Human Trafficking FAQs*, U.N. OFF. DRUGS & CRIME, <http://www.unodc.org/unodc/en/human-trafficking/faqs.html> (last visited Jan. 28, 2014).

<sup>17</sup> See Sherri Zack, *Domestic Minor Sex Trafficking: The Challenges Faced in Prosecuting Those Who Prey on America's Youth*, J. APP. RES. ON CHILD.: INFORMING POL'Y FOR CHILD. RISK, Mar. 15, 2011, at 1, available at <http://digitalcommons.library.tmc.edu/childrenatrisk/vol2/iss1/13/> (explaining that oftentimes CSEC victims do not realize they are victims, and are mistakenly arrested by law enforcement "for prostitution as adults because they lie about their age, often at the instruction of their pimps").

<sup>18</sup> *Id.*

<sup>19</sup> See NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A FACT SHEET, [http://www.missingkids.com/en\\_US/documents/CCSE\\_Fact\\_Sheet.pdf](http://www.missingkids.com/en_US/documents/CCSE_Fact_Sheet.pdf) (last updated Mar. 2010) ("The child experiences a strong link to the pimp/exploiter based in what the child perceives as an incredibly intense or important relationship, but one in which there has been an exploitation of trust or power. Emotional bonding is a learned tactic for survival and can be common between exploited children and the exploiter."); Shirley Jülich, *Stockholm Syndrome and Sex Trafficking: Why Don't They Do Something?*, FAIR OBSERVER (Aug. 21, 2013), <http://www.fairobserver.com/article/stockholm-syndrome-sex-trafficking-why-dont-they-do-something>; see also Yamiche Alcindor, *Sex Trafficking in the USA Hits Close to Home*, USA TODAY (Sept. 27, 2012), <http://usatoday30.usatoday.com/news/nation/story/2012/09/27/human-trafficking-in-the-united-states-finds-a-home-in-the-schoolyard/57846054/1> (interviewing one CSEC survivor who explained, "[i]t's about love and thinking you're part of a family and a team. I couldn't leave because I thought he would kill me"); POLARIS PROJECT, NAT'L HUMAN TRAFFICKING RESOURCE CTR., IN

Further, once a child is CSEC-identified, there is no guarantee she or he<sup>20</sup> will receive therapeutic services or even return to his or her community. In some cases where a CSEC youth is removed from his or her trafficker due to arrest, for example, "by the time the legal establishment realizes that a child has been arrested, pimps have bonded the child out and put him or her back to work."<sup>21</sup> These factors make it difficult to determine the number of commercially sexually exploited children in the United States, as well as the rate at which the problem is growing. However, based on the available data, researchers estimate that at least 100,000 children are sexually exploited across the country annually.<sup>22</sup>

### C. Learning to Spot the Warning Signs of Exploitation

Child advocates should be familiar with the common warning signs that a child is a victim of exploitation. These include a child's unexplained absences from school, chronic runaway behaviors, references to frequent travel to other cities, "lack[ing] control over his or her schedule," providing answers to questions that sound coached or rehearsed, visible bruises on the child, inappropriate dress, references to sexual knowledge inappropriate for the child's age, a noticeably older "boyfriend," and a fearful or depressed demeanor.<sup>23</sup> Additional warning signs include the child having access to new clothes, luxury items or large amounts of money with no explanation, "[b]rands or scarring indicating ownership (such as tattoos)," and withdrawal from family or friends.<sup>24</sup>

Perpetrators may gain access to potential victims through the Internet and social media, and sometimes use other children or adolescents to help "recruit" other victims.<sup>25</sup> Just as children may become commercially sexually exploited through different media, ongoing commercial sexual exploitation looks different for each child.<sup>26</sup> Some children are kidnapped and held by their perpetrators, while others remain in or sporadically return to the community, and there are even situations where the suspected perpetrator resides within the family home.<sup>27</sup> Perpetrators also use different ways to maintain control over exploited children; some rely solely on

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THEIR SHOES: UNDERSTANDING VICTIMS' MINDSETS AND COMMON BARRIERS TO VICTIM IDENTIFICATION (2010), available at [http://www.amsa.org/AMSA/Libraries/Committee\\_Docs/Understanding\\_Victims\\_Mindsets.sflb.ashx](http://www.amsa.org/AMSA/Libraries/Committee_Docs/Understanding_Victims_Mindsets.sflb.ashx) (outlining "physical and psychological reasons why trafficked persons cannot or will not leave a trafficking situation," including fear and traumatic bonding to the trafficker).

<sup>20</sup> Given the difficulties related to capturing data on this issue, the gender breakdown of CSEC-victims remains unclear. Some researchers have found that boys comprise half of all exploited children. See Jodie Gummow, *10 Surprising and Counterintuitive Facts About Child Sex Trafficking*, ALTERNET, <http://www.alternet.org/civil-liberties/10-surprising-and-counterintuitive-facts-about-child-sex-trafficking?page=0%2C0> (last visited Mar. 24, 2014) (summarizing results of the 2008 John Jay College study and 2013 ECPAT-USA study). For the purposes of this Article, the authors have used both male and female pronouns.

<sup>21</sup> Zack, *supra* note 17, at 2.

<sup>22</sup> U.S. Department of Education to Host Discussion on Federal Agencies' Efforts to Stop Human Trafficking and Sexual Exploitation of School-Aged Youths, U.S. DEP'T EDUCATION (Feb. 5, 2013), <http://www.ed.gov/news/media-advisories/us-department-education-host-discussion-federal-agencies%3F-efforts-stop-human-t> [hereinafter *U.S. Department of Education to Host Discussion*] (citing statistics collected by the National Center for Missing and Exploited Children).

<sup>23</sup> U.S. DEP'T OF EDUC., HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES: A FACT SHEET FOR SCHOOLS, <http://www2.ed.gov/about/offices/list/oese/oshs/tipfactsheet91913.pdf> (last visited Jan. 23, 2013) [hereinafter HUMAN TRAFFICKING].

<sup>24</sup> CHILDREN'S ADVOCACY CTR. OF SUFFOLK CNTY., SEEN: COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN, <http://www.suffolkcac.org/assets/pdf/CSEC.pdf> (last visited Nov. 15, 2013).

<sup>25</sup> HUMAN TRAFFICKING, *supra* note 23; see also Feuerberg, *supra* note 4 ("As young people nowadays are eager to share their inner lives on social media, traffickers look for opportunities to exploit vulnerabilities and offer false understanding and false love.")

<sup>26</sup> KATE WALKER, CAL. CHILD WELFARE COUNSEL, ENDING THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: A CALL FOR MULTI-SYSTEM COLLABORATION IN CALIFORNIA 13 (2013), available at [http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System\\_Collaboration-in-CA.pdf](http://www.youthlaw.org/fileadmin/ncyl/youthlaw/publications/Ending-CSEC-A-Call-for-Multi-System_Collaboration-in-CA.pdf).

<sup>27</sup> These examples are based off the authors' experiences and various situations they have encountered.

psychological or physically abusive tactics, while other perpetrators may provide the child with illicit drugs to make the child easier to control.<sup>28</sup>

While the details may be grim and difficult to discuss for even the most seasoned practitioner, it is important to determine the specifics of a youth's CSEC experience. Once the child is identified as commercially sexually exploited, it is crucial to understand the child's relationship with his or her perpetrator and the means of exploitation to ensure ongoing safety and implementation of an effective service plan. The next section will address strategies to obtain this information and apply it in a way that promotes positive outcomes and avoids re-traumatizing the child.

### III. ADDRESSING CSEC AS A GUARDIAN AD LITEM

Sexually exploited children often come to the attention of the court system through child welfare, delinquency, or status offense cases.<sup>29</sup> In these situations, a court-involved youth may benefit from the appointment of a GAL or a Court Appointed Special Advocate (CASA) volunteer<sup>30</sup> tasked with representing the child's best interest.<sup>31</sup> The precise duties of a best interest GAL are typically defined and informed by local statute, case law, court practice standards, or ethical opinions, though some overarching principles do apply.<sup>32</sup>

Best interest GALs can be especially useful in cases where a CSEC youth's expressed interest, such as returning to his or her perpetrator or returning to the community without any support services in place, may put the youth at continued risk. In status offense and delinquency cases in particular, the youth is entitled to stated interest representation, meaning the child's attorney is duty-bound to advocate for the child's wishes, even when doing so may increase the likelihood of future harm.<sup>33</sup> Thus, the appointment of an attorney with a countervailing ethical

<sup>28</sup> See, e.g., Amy Fine Collins, *Sex Trafficking of Americans: The Girls Next Door*, VANITY FAIR (May 24, 2011), <http://www.vanityfair.com/politics/features/2011/05/sex-trafficking-201105> ("There are basically two business models: manipulating girls through violence—that's called 'gorilla' pimping—and controlling them with drugs."); Alcindor, *supra* note 19 (noting that perpetrators may "bait victims by telling them they will be beautiful strippers or escorts but later ply them with drugs -- ecstasy pills, cocaine, marijuana and the like -- and force them into sex schemes.").

<sup>29</sup> See Malika Saada Saar, *Stopping the Foster Care to Child Trafficking Pipeline*, HUFFINGTON POST (Oct. 29, 2013), [http://www.huffingtonpost.com/malika-saada-saar/stopping-the-foster-care-\\_b\\_4170483.html](http://www.huffingtonpost.com/malika-saada-saar/stopping-the-foster-care-_b_4170483.html) (noting that in 2013, "Sixty percent of the child sex trafficking victims recovered as part of a FBI nationwide raid from over 70 cities were children from foster care or group homes"); *Preventing and Addressing Sex Trafficking of Youth in Foster Care: Hearing Before the Subcomm. on Human Resources of the H. Comm. on Ways & Means*, 113th Cong. 1-4 (2013) (statement of Rep. Louise M. Slaughter), available at <http://www.hsdl.org/?view&did=746308> (reporting that eighty-five percent of trafficking victims in Representative Louise M. Slaughter's (D-NY) home state have prior child welfare involvement); see also Feuerberg, *supra* note 4 (indicating that "child sex trafficking victims are frequently misidentified as troubled youth: delinquents and runaways"). "Status offenses are non-delinquent/non-criminal infractions that would not be offenses but for the youth's status as a minor." See COAL. FOR JUVENILE JUSTICE, NATIONAL STANDARDS FOR THE CARE OF YOUTH CHARGED WITH STATUS OFFENSES 10 (2013).

<sup>30</sup> See *About Us*, COURT APPOINTED SPECIAL ADVOC. FOR CHILD., [http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301303/k.6FB1/About\\_Us\\_\\_CASA\\_for\\_Children.htm](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.5301303/k.6FB1/About_Us__CASA_for_Children.htm) (last visited Feb. 3, 2014). Founded in 1977, CASA is a nationwide program in which trained volunteers act as informed advocates for children in the dependency system. *Id.*

<sup>31</sup> See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T HEATH & HUM. SERVS., DETERMINING THE BEST INTERESTS OF THE CHILD 2 (2012), [https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf) ("Although there is no standard definition of 'best interests of the child,' the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. 'Best interests' determinations are generally made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and well-being the paramount concern.").

<sup>32</sup> *Id.* at 2, 6.

<sup>33</sup> See *In re Gault*, 387 U.S. 1, 40-41 (1967) (holding that in juvenile delinquency proceedings, "which may result in commitment to an institution in which the juvenile's freedom is curtailed," due process requires that the child be represented by counsel); see also *id.* at 81 n.65 (recognizing that "children need advocates to speak for them and guard their interests, particularly when disposition decisions are made").

loyalty, to advocate for what the child needs, not just what the child wants, may be necessary to secure appropriate assistance for a CSEC youth. This is especially true when the attorneys representing the government may not be knowledgeable about CSEC,<sup>34</sup> and, given the price tag of some therapeutic services, they may be disinclined to support such treatment at the government's expense absent zealous advocacy on the part of a GAL.

#### A. Finding a CSEC Client

Runaway behaviors are a hallmark of the commercial sexual exploitation of children.<sup>35</sup> Thus, finding and accessing a child client may be the advocate's first challenge in these cases. To that end, it is often helpful to request a client's email address during an initial meeting since, unlike cell phones, email addresses are free to use and are more likely to stay the same over time.<sup>36</sup>

When trying to track down a client, social media may also be a helpful tool. Even when children travel across jurisdictions, they may continue to access these accounts and maintain communication with trusted friends or relatives. Additionally, perpetrators may use others websites such as Backpage.com, to advertise exploited children.<sup>37</sup> Advocates have successfully located missing youth by searching these websites for potential victims of CSEC.<sup>38</sup>

Furthermore, GALs should consider using their subpoena power to obtain the log-in coordinates that clients have used to access certain websites. In Washington, D.C. for example, counsel appointed in a delinquency or status offender matter may issue a subpoena "for all helpful evidence and witnesses," in preparation for an evidentiary hearing.<sup>39</sup> Because the child's current location is central to the case, advocates have a good faith basis to make these requests. Once login coordinates have been obtained, a GAL will know which community, even the particular neighborhood, the child may be in<sup>40</sup> and can work with authorities in that jurisdiction to locate the child. Social media websites have grown more familiar with, and responsive to, these types of requests.<sup>41</sup> Facebook, for example, has developed its own protocol for requesting information with a subpoena or warrant.<sup>42</sup>

<sup>34</sup> Although the federal government through its executive agencies has shown an interest in CSEC, *see, e.g., End Human Trafficking*, U.S. DEP'T HOMELAND SECURITY, <https://www.dhs.gov/end-human-trafficking> (last visited Mar. 28, 2014), this information is not always translated to work of line attorneys prosecuting juvenile and status offense cases on the local level.

<sup>35</sup> *See Red Flags & Risk Factors*, FAIR GIRLS, <http://fairgirls.org/the-issue/issue-links/resources> (last visited Mar. 24, 2014) (identifying "[c]hronically in absence from foster home or group home" as a red flag and risk factor for human trafficking); *see also* HUMAN TRAFFICKING, *supra* note 23 (citing frequently running away from home as an "indicator[ ] that school staff and administrators should be aware of concerning a potential victim").

<sup>36</sup> *See* B.B. Liu & Lauren McSwain, Presentation at the National Association of Counsel for Children Annual Conference, Session C-4, "I Lost My Lawyer's Number": Practical and Low-Cost Interventions to Assist the Populations Often Present in Family Court Cases (Aug. 2013) (PowerPoint available at <http://www.nacchilaw.org/?page=2013Material>) (discussing clients' issues with cell phones such as losing a voicemail from an attorney because their minutes ran out).

<sup>37</sup> *See* Abigail Kuzma, *A Letter to Congress: The Communications Decency Act Promotes Human Trafficking*, 34 CHILD. LEGAL RTS. J., Fall 2013, at 23, 30 (indicating that "law enforcement employees involved in sex trafficking cases [ ] point to Backpage as advertising illegal sex and child sex trafficking victims"); *see also* Daniel Fisher, *Backpage Takes Heat, but Prostitution Ads are Everywhere*, FORBES (Jan. 26, 2012), <http://www.forbes.com/sites/danielfisher/2012/01/26/backpages-takes-heat-for-prostitution-ads-that-are-everywhere/> (noting that "attorneys general of 48 states sent a letter to Backpage [in August 2011] accusing the company of being a 'hub' for child sex trafficking activity").

<sup>38</sup> *See* Andrea Powell, *Sex Trafficking in America: The Role of Online Advertisers*, FAIR OBSERVER (Sept. 26, 2013), <http://www.fairobserver.com/article/sex-trafficking-america-role-online-advertisers?page=10>.

<sup>39</sup> SUPERIOR COURT OF D.C. FAMILY COURT IMPLEMENTATION COMM., ATTORNEY PRACTICE STANDARDS FOR REPRESENTING JUVENILES CHARGED WITH DELINQUENCY OR AS PERSONS IN NEED OF SUPERVISION 21 (2004) (E-1 Motion Hearings) [hereinafter D.C. ATTORNEY PRACTICE STANDARDS], available at <http://www.dccourts.gov/internet/documents/0413a.pdf>.

<sup>40</sup> There are numerous free web services to help trace IP coordinates to a client's geographic location. One such website is <http://www.iplocation.net/>.

<sup>41</sup> *See Confidential Facebook Law Enforcement Subpoena Guides*, PUB. INTELLIGENCE (Oct. 6, 2010), <http://publicintelligence.net/confidential-facebook-law-enforcement-subpoena-guides-2007-2010/>.

<sup>42</sup> *See id.*

Finally, the GAL must consider when and how to engage with law enforcement to locate a child. Because runaway behaviors are not generally uncommon for foster children, local social service agencies and police may be apt to lump the client among youth who have absconded of their own volition (e.g. youth who have "voted with their feet" to leave their foster home).<sup>43</sup> The GAL must distinguish the CSEC-vulnerable or CSEC-identified client from this "delinquent" category of youth and alert authorities that the child may be especially at risk. Additionally, the National Center for Missing and Exploited Children ("NCMEC") maintains a hotline for reporters, known as the "Cyber Tipline," in addition to an internal division devoted to CSEC cases.<sup>44</sup> Because NCMEC receives reports from across all jurisdictions<sup>45</sup> (rather than police departments and child welfare agencies, which are localized), GALs should consider reporting a missing client to this clearinghouse as well, since they may be well positioned to track movement across state lines. In conjunction with law enforcement, NCMEC will coordinate its own efforts to locate a missing child, such as searching public databases for information about the child or perpetrator, harnessing media attention, and distributing missing child posters to its corporate partners.<sup>46</sup> Efforts at coordination between professionals and local and national agencies to locate a client are imperative to fully advocating for the commercially sexually exploited child.

### B. Investigation and Interviewing

A solid factual understanding of a youth's current circumstances, gleaned from direct interviews with the child client as well as collateral sources such as teachers and school administrators, relatives, and services providers, is the foundation for quality GAL practice.<sup>47</sup> Child advocates should develop and apply specialized skills for communicating with young clients and should be able to adapt their interview and client counseling skills according to the child's emotional stage and developmental level.<sup>48</sup>

When approaching a client for whom CSEC is suspected or confirmed, advocates should be especially deliberate to use non-judgmental, trauma-informed communication techniques.<sup>49</sup> For example, in some situations, it may not be necessary or even helpful to directly question a client about his or her experience of exploitation. The youth may not yet have begun to process his or her experience in a therapeutic way, and the child may even still be in the throes of crisis or traumatic attachment to the perpetrator.<sup>50</sup> For some children who have experienced trauma, it may be inadvisable to question them directly about their experiences until they are placed in a stable environment and have achieved a basic level of emotional stability.<sup>51</sup> Approaching these

<sup>43</sup> See *supra* note 29 and accompanying text.

<sup>44</sup> *CyberTipline*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/cybertipline> (last visited Mar. 24, 2014). The National Center for Missing and Exploited Children operates twenty-four hours a day, seven days a week at 1-800-THE-LOST (1-800-843-5678), or through its CyberTipline. *24-Hour Call Center*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/Hotline> (last visited Mar. 29, 2014).

<sup>45</sup> *24-Hour Call Center*, *supra* note 44.

<sup>46</sup> *Child Sex Trafficking*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.missingkids.com/CSTT> (last visited Mar. 24, 2014); see also NAT'L CTR. FOR MISSING & EXPLOITED CHILD., 2012 CORPORATE PARTNERS 6, [http://www.missingkids.com/en\\_US/publications/NC171\\_sponsors.pdf](http://www.missingkids.com/en_US/publications/NC171_sponsors.pdf) (noting that organizations such as Walmart and Sam's Club partner with NCMEC and "display Missing Children's Network bulletin boards in their facilities" with the NCMEC hotline number).

<sup>47</sup> AM. BAR ASS'N, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES, RULE C-2 (approved Feb. 5, 1996) [hereinafter ABA STANDARDS].

<sup>48</sup> See *id.* (RULE I-2(5)) (indicating training for lawyers should include a "focus on child development, needs, and abilities"); see also WALKER *supra* note 26, at 74-76 (offering techniques for interviewing CSEC-involved youth).

<sup>49</sup> See WALKER *supra* note 26, at 73.

<sup>50</sup> See *supra* text accompanying note 18.

<sup>51</sup> GLENN N. SAXE ET AL., COLLABORATIVE TREATMENT OF TRAUMATIZED CHILDREN AND TEENS: THE TRAUMA SYSTEMS THERAPY APPROACH 129 (2007) ("The cognitive-processing (CP) module...involves the child's learning cognitive-behavioral techniques of trauma processing so that he/she will not become dysregulated when faced with stressors or reminders....This module can only be

sensitive topics prematurely may expose the child to unnecessary duplicative interviewing, cause re-traumatization, and disrupt the future potential for the child to divulge the information in a supportive therapeutic environment, with the support of a qualified clinician.<sup>52</sup>

To the extent that the GAL requires information about the child's CSEC experience to carry out his or her work, the GAL should consider whether such information can be culled from other sources, such as reports the child has already made to police, social workers, or forensic interviewers. In fact, it may even be beneficial for the GAL to collect and compare various alternative reports, perhaps creating a timeline as needed, prior to discussing the events directly with the child. In this way, the GAL can avoid the harms of duplicative interviewing and re-traumatization described above, while targeting his or her investigative efforts on areas where the facts remain unclear.

Notwithstanding these parameters, there are circumstances in which it will be necessary and unavoidable to discuss a client's experience of exploitation with the client directly. GALs should be mindful to frame these discussions using non-judgmental language that does not guide the child toward any certain response. For example, instead of asking "Are you prostituting yourself?" an advocate should consider reframing the question as, "Have you ever done something sexual in exchange for something you needed?" The California Child Welfare Council has produced a useful guide for professionals interviewing CSEC youth, which includes an Appendix with a host of sample questions.<sup>53</sup> GALs should employ the sample questions provided in such resources in formulating their own set of questions in a way as to be sensitive to the traumatic experience of their clients.

### C. Legal Issue Spotting

Child advocates may be appointed to represent CSEC youth in a variety of legal postures, including dependency, delinquency, and status offender proceedings. As previously discussed, commercially sexually exploited children are often first identified as children in trouble when they are referred to the legal system for truancy or runaway behaviors.<sup>54</sup> Both activities indicate that a child may be a victim of human trafficking.<sup>55</sup>

One initial and ongoing task for GALs will be to assess whether the current legal venue is in fact the appropriate one to meet the child's needs. Nationwide, CSEC reforms are beginning to approach CSEC cases through methods other than the punitive model traditionally applied to court-involved youth.<sup>56</sup> However, the majority of jurisdictions have not fully implemented this new approach, and in many jurisdictions the shift to a non-punitive approach has not yet begun. Thus, the GAL must consider whether the youth's court case is designed to address his or her needs in a meaningful way, rather than punish behavior.

Consider, for example, the case of Michelle, an eleven-year old child whose first contact with the local court occurs after her arrest on charges of solicitation and prostitution. During the course of her investigation, the assigned GAL speaks to several neighbors in the community, all

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used, however, when the social environment is reasonably stable and the child has acquired sufficient emotional regulation skills to tolerate talking about the trauma.").

<sup>52</sup> U.N. OFFICE ON DRUGS & CRIME, ANTI-HUMAN TRAFFICKING MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS: MODULE 3, at 2, 10 (2009), available at [http://www.unodc.org/documents/human-trafficking/TIP\\_module3\\_Ebook.pdf](http://www.unodc.org/documents/human-trafficking/TIP_module3_Ebook.pdf) ("Avoid early interviews wherever possible. An early interview of the victim will in many cases overstrain the victim's capacity to remember and to cope with the overwhelming memories and may jeopardize the consistency of the statement you obtain.").

<sup>53</sup> See WALKER, *supra* note 26, at 74-77.

<sup>54</sup> Truancy and running away are considered status offenses. See COAL. FOR JUVENILE JUSTICE, *supra* note 29.

<sup>55</sup> See *supra* text accompanying note 29.

<sup>56</sup> See, e.g., Brown, *supra* note 5 (discussing the implementation of a "Girls Court" linking CSEC victims and vulnerable girls to "social service agencies, providing informal Saturday sessions on everything from body image to legal jargon, and offering a team of adults whom they can develop and trust").

of whom note that they frequently observed adult male visitors entering and exiting the home. During a visit to the home, the GAL notes that the front door has no doorknob. Furthermore, although Michelle's mother vocalizes concern about her daughter's recent arrest for prostitution, she does not think Michelle's sexually provocative wardrobe is problematic, and in fact will often pay for Michelle to maintain long nail extensions and other adult fashions. On several occasions, the mother has lied to the GAL about Michelle's whereabouts, during times that Michelle should have been at school or at home for her court-ordered curfew. In this situation, the GAL may have reason to believe that a child welfare investigation into the home may be more appropriate than an ongoing status offender case, the latter of which places responsibility on the child rather than the caregiver. In such circumstances, the GAL should make the appropriate referral to local child welfare services, request that the juvenile charges be dismissed, or motion the court accordingly, pursuant to the general practice of the jurisdiction.

Alternatively, informal advocacy may also achieve the goal of transferring the case to an appropriate venue. Although CSEC is still a relatively new issue for many frontline, direct service workers, it is often possible to find at least one person within a public agency or child-serving organization to act as a CSEC-informed ally. In Michelle's case, for example, the GAL might try to identify the most informed person on this issue within the local prosecutor's office, and request that he or she work to internally educate and instruct colleagues as to the appropriateness of dismissing the solicitation charges in favor of a child welfare case.

In addition to monitoring the case in which they are appointed, GALs should assist with identifying any colorable legal claims to which the client may be entitled, such as civil damages from the perpetrator<sup>57</sup> or immigration relief (e.g., Special Immigrant Juvenile Status, T-Visa, Continued Presence status).<sup>58</sup> In Washington, D.C., for example, ethics guidelines make clear that a GAL who has identified potential claims, while not responsible for personally initiating them, "has an obligation at least to assure that colorable claims for compensation do not simply drift away because no one else is aware of them."<sup>59</sup> Thus, at a minimum, attorneys working with youth who are CSEC-vulnerable, CSEC-involved, or CSEC survivors, should familiarize themselves with these commonly associated legal claims and stand ready to provide advice and referral as needed.

In situations where a perpetrator is criminally prosecuted, GALs should attempt to protect their clients when their clients are called as witnesses. The act of testifying is particularly sensitive for the CSEC child, as a previously exploited youth may be re-traumatized through the experience of testifying.<sup>60</sup> "The whole process of a criminal investigation and trial may cause secondary victimization, because of difficulties in balancing the rights of the victim against the rights of the accused or the offender, or even because the needs and perspective of the victim is entirely ignored."<sup>61</sup> A GAL can and should advocate for appropriate out-of-court testimony

<sup>57</sup> Pursuant to the Trafficking Victims Protection Act, trafficking victims may sue their perpetrators for punitive, compensatory, and pecuniary damages, as well as reasonable attorney's fees. Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 1595(a) (West 2014); Kathleen Kim & Kusia Hreshchysyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 16 (2004).

<sup>58</sup> See *Human Trafficking Resources*, U.S. COMMITTEE FOR REFUGEES & IMMIGRANTS, <http://www.refugees.org/resources/for-lawyers/human-trafficking-resources/human-trafficking-resource.html> (last visited Feb. 8, 2014) (providing a further explanation of these and other immigration claims available to trafficking victims).

<sup>59</sup> D.C. BAR LEGAL ETHICS COMM., OPINION 252: OBLIGATIONS OF A LAWYER APPOINTED GUARDIAN AD LITEM IN A CHILD ABUSE AND NEGLECT PROCEEDING WITH RESPECT TO POTENTIAL TORT CLAIMS OF THE CHILD (1994), available at <http://www.dcbbar.org/bar-resources/legal-ethics/opinions/opinion252.cfm>.

<sup>60</sup> Gail S. Goodman et al., *Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims*, MONOGRAPHS SOC'Y FOR RES. CHILD DEV., July 1992, at 1, 7-8.

<sup>61</sup> U.N. OFFICE ON DRUGS & CRIME, *supra* note 52, at 12.

options to mitigate this potential harm. Federal law provides a number of such options, including testimony through closed-circuit television, videotaped deposition, and clearing the courtroom prior to the child's testimony.<sup>62</sup>

GALs may also request protective orders for any evidence regarding the child that would otherwise be publicly available, and should vigilantly challenge the defendant from accessing confidential information about the child witness during the discovery process.<sup>63</sup> In Washington, D.C. for example, attorneys representing adult defendants may apply to inspect the case records of juvenile victims in those cases.<sup>64</sup> GALs should request notice and the opportunity to be heard if such an application for inspection is filed, and then motion the court accordingly to avoid harmful disclosures.<sup>65</sup>

"The [GAL] may perform a variety of roles, including those of independent investigator, advocate, and advisor to the child."<sup>66</sup> In some instances, "[i]f the same child is involved in more than one court proceeding (e.g., a child protection case and a criminal case), the [GAL] may also serve the important purpose of bridging the gap between the various courts."<sup>67</sup> The GAL may, at times, be the only professional working with the child who is able to advocate in multiple forums.<sup>68</sup> Where a CSEC victim is put at increased risk by testifying against his or her perpetrator as a witness, GALs may have the knowledge and skills to help develop a safety plan with the client, to involve the appropriate caregivers and clinicians to develop such a plan, or to make requests for court orders as needed to ensure the client's safety.

#### D. Developing a Case Theory

Successful child advocacy is rooted in a strong and persuasive case theory.<sup>69</sup> "The theory of the case is your explanation of what has happened and why – it is the lawyer's 'depiction of the child and her world, to convince the Powers that Be to honor the child's objectives.'"<sup>70</sup> Although developing a case theory and theme is traditionally undertaken during trial preparation, child advocates should apply and refine their case theories at all stages of the case, both inside and outside of the courtroom.

For cases involving the commercial sexual exploitation of children, developing a case theory will reframe the narrative of the child's life from what other involved professionals and the court may already perceive it to be. Because these youths often come to the attention of the courts as offenders rather than victims, they will likely be viewed as such.<sup>71</sup> The common risk factors

<sup>62</sup> 18 U.S.C.A. § 3509(b), (c) (West 2014).

<sup>63</sup> *Id.* § 3509(d).

<sup>64</sup> D.C. ATTORNEY PRACTICE STANDARDS, *supra* note 39, at 26.

<sup>65</sup> For example, in Washington, D.C., a *Brown* Motion is the appropriate method to make such a request. *See Brown v. United States*, 567 A.2d 426, 428 (D.C. 1989) (requiring prior leave of court before any subpoenas may be served for the production of material covered by statutory doctor-patient privilege).

<sup>66</sup> CHILD WELFARE INFO. GATEWAY, U.S. DEP'T HEALTH & HUM. SERVS., *The Court System and Child Abuse and Neglect*, in WORKING WITH THE COURTS IN CHILD PROTECTION (2012), available at [https://www.childwelfare.gov/pubs/usermanuals/courts\\_92/courtsc.cfm](https://www.childwelfare.gov/pubs/usermanuals/courts_92/courtsc.cfm).

<sup>67</sup> *Id.*

<sup>68</sup> This observation is based on the authors' experience.

<sup>69</sup> *See* ABA STANDARDS, *supra* note 47 (RULE B-1(6)) (including "develop[ing] a theory and strategy of the case" as a child attorney's basic obligation).

<sup>70</sup> CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES 531 (Marvin Ventrell & Donald N. Duquette, eds., 2005) (quoting JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 147 (1997)).

<sup>71</sup> The authors note that another important step in advocating for these children is determining whether or not the local court system has been educated and engaged in preventing the commercial sexual exploitation of children. In the authors' jurisdiction, the District of Columbia, the local court has established a committee of stakeholders that meets on a bi-monthly basis to address the issue of CSEC youth who come through, and between, the family and juvenile courts. Forming such a multi-disciplinary task force is a helpful best practice that curbs the tendency for various public systems – such as child welfare, juvenile justice, mental health and education – to silo their work. *See* REBECCA EPSTEIN & PETER EDELMAN, BLUEPRINT: A MULTIDISCIPLINARY APPROACH TO THE DOMESTIC SEX

and warning signs of CSEC, such as truancy, abscondence, gang involvement, and tattoos,<sup>72</sup> may further add to the misconception that the child is simply a troublemaker. The GAL must continually seek to cast his or her child client as a victim/ survivor, rather than as an offender or delinquent.

Promoting a case theory begins with educating other professionals who interface with the child about CSEC.<sup>73</sup> Despite the increase in media attention surrounding this issue,<sup>74</sup> old myths and misconceptions persist.<sup>75</sup> Unfortunately, "*It was his choice to run away,*" "*No one forced her to meet up with him,*" and "*I thought trafficking only happened in other countries,*" are common refrains,<sup>76</sup> even among dedicated and otherwise informed public interest professionals.

When this occurs, advocates may find it useful to reference the Trafficking Victims Protections Act.<sup>77</sup> As discussed above, the TVPA specifically identifies trafficking victims to include any minor who is offered up for sex in exchange for goods or services, regardless of any purported "complicity" on behalf of the child. If the tenor of court hearings or team meetings<sup>78</sup> tends to shame the child as a willing participant in his or her own exploitation, advocates should continually explain the language of the TVPA and remind others of the baseline it establishes, that this child is a victim. To the extent that local statutory rape and sexual abuse laws are consistent with the TVPA and exclude age as a defense to these crimes, attorneys should draw this parallel in their written and oral advocacy. Advocates should also reiterate the absence of an international or border-crossing mandate to refute any challenges to a client's status as a commercially sexually exploited youth.

Despite the language of the TVPA indicating that a child is a victim, it may still be an uphill battle to help other team members shift their mindset when it comes to CSEC cases. Given

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TRAFFICKING OF GIRLS 8 (2014), available at <http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/loader.cfm?csModule=security/getfile&pageid=169026>.

<sup>72</sup> See HUMAN TRAFFICKING, *supra* note 23; NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 19; POLARIS PROJECT, NAT'L HUMAN TRAFFICKING RESOURCE CTR., POTENTIAL TRAFFICKING INDICATORS FOR MEDICAL PROFESSIONALS, available at <http://www.cicatelli.org/titlex/downloadable/Polaris%20Project%20At-A-Glance%20for%20Medical%20Professionals%20Final.pdf>.

<sup>73</sup> While the authors note the importance of defining CSEC and framing the youth's experience in context, they do so with the important caveat that it is generally not the attorney who should decide how or when this disclosure occurs. For stated interest attorneys representing the parent or caregiver of a CSEC survivor (such as a special education attorney), an important part of client counseling in these cases is determining: (1) how much the parent or caregiver knows about a child's experience; (2) the caregiver's perspective on that experience; and (3) what the caregiver is comfortable having shared with other individuals working with the child and with the court. Stated interest attorneys who directly represent the youth, such as juvenile defenders, have similar obligations. See, e.g., ABA STANDARDS, *supra* note 47 (RULE B-2) (comment) (indicating "[t]he lawyer-client role involves a confidential relationship with privileged communications"). Alternatively, guardians *ad litem* who represent the "best interests" of a child may have more discretion in what they share. See *id.* (noting that a guardian *ad litem*-client role may not be confidential). The authors have therefore found that best practice calls for an ongoing dialogue with the client about the client's comfort level with disclosure.

<sup>74</sup> See, e.g., Danielle Martinelli, *U.S. Media's Failure to Set the Agenda for Covering Sex Trafficking*, ELON J. UNDERGRADUATE RES. COMM., Fall 2012, at 102, 108 (analyzing *The New York Times'* coverage of human trafficking and noting an increase in coverage beginning in 2007).

<sup>75</sup> *Child Trafficking*, CHILD. AT RISK, <http://childrenatrisk.org/research/child-trafficking/> (last visited Jan. 28, 2014) ("Human trafficking once was thought to be a problem beyond America's borders....The internal or 'domestic' component of human trafficking is much larger than the international one."); see also *Human Trafficking: The Myths and Realities*, FORBES (Jan. 24, 2012), <http://www.forbes.com/sites/dailymuse/2012/01/24/human-trafficking-the-myths-and-the-realities/> (discussing myths about human trafficking, for example, that only women are trafficked, that everybody who is trafficked is either kidnapped or deceived, and that trafficking does not occur in the United States); *FAQs: Myth and Misconceptions*, TRAFFICKING HOPE, <http://www.traffickinghope.org/faqsmyth.php> (last visited Mar. 25, 2014) (listing myths, such as "Prostitution is a victimless crime"); *Myths and Misconceptions*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/myths-and-misconceptions> (last visited Mar. 25, 2014) (identifying myths related to trafficking and describing the realities behind those myths).

<sup>76</sup> See *supra* text accompanying note 75.

<sup>77</sup> Trafficking Victims Protection Act of 2000, 22 U.S.C.A. § 7102(9), (14) (West 2014).

<sup>78</sup> While there is no mandated group of team members in a given case, for the purposes of this Article, the authors are referring to the many legal and social service providers who may work with a commercially sexually exploited child, including but not limited to: the child's parent or caregiver, therapist, guardian *ad litem*, defense attorney, social worker, and probation officer.

that domestic child sexual exploitation is still a burgeoning issue unfamiliar to many, GALs may find that they are the most CSEC-informed members on the client's team. Therefore, GALs should actively welcome the role of educating others in a non-judgmental way about the unique needs of this client population. It may be helpful to share educational materials or news articles with other professionals. Useful resources to share with team members include Shared Hope International,<sup>79</sup> the Polaris Project,<sup>80</sup> Washington State's "Project Respect,"<sup>81</sup> and the U.S. Department of Homeland Security's Blue Campaign.<sup>82</sup> Each of the websites of these organizations is well-organized and written in plain language that is accessible even to those unfamiliar with this topic. Additionally, prior to team meetings, it may be helpful to circulate a brief proposed agenda in order to set the tone for the upcoming meeting and guide it towards a positive, therapeutic conversation.

Depending on the child's level of maturity and emotional stability, advocates may consider involving the child in the process of educating the team advocating on his or her behalf. Many CSEC advocacy groups have incorporated survivor-led trainings into their curriculums<sup>83</sup> and trauma experts have determined that this experience of "meaning-making" is a capstone to the healing process.<sup>84</sup> Advocates, however, should make the decision to incorporate the child client into this process in consultation with the child's caregiver, therapist, and the child.

Importantly, the authors are not suggesting that the GAL should ignore or excuse a client's negative behaviors, since doing so could actually harm the client or impede therapeutic progress. To the contrary, promoting a case theory that casts the child client in the appropriate light, as a victim, not an offender, is simply a way of setting the stage for positive interaction with assigned professionals and requesting specialized services, rather than those aimed at criminal rehabilitation. The authors implore advocates to develop a case theory as a tool to achieve better outcomes for their clients before, during, and after the trial stage of the proceeding. For the CSEC-involved client, this case theory has the added benefit of appealing to both law and common sense, and thus will likely prove persuasive to other members of the team.

#### E. Care Coordination and Service Recommendation

GALs can assist with the care, coordination, and monitoring process for CSEC youth. Although there may sometimes be a team member tasked with this work, such as a probation officer, this is often not the person best suited to execute these responsibilities. Probation officers

<sup>79</sup> Shared Hope International ("SHI") is a Christian abolitionist organization devoted to eradicating human trafficking in all of its forms. *Our Mission and Values*, SHARED HOPE INT'L, <http://sharedhope.org/about-us/our-mission-and-values/> (last visited Jan. 28, 2014). SHI maintains Protected Innocence Challenge "report cards" for each state available on its website, grading and summarizing the legal protections and initiatives available to address CSEC in each state. See *2013 State Report Cards – Protected Innocence Challenge*, SHARED HOPE INT'L, [sharedhope.org/what-we-do/bring-justice/reportcards/2013-reportcards/](http://sharedhope.org/what-we-do/bring-justice/reportcards/2013-reportcards/) (last visited Jan. 28, 2014). The organization also produces training materials for educators and other individuals on human trafficking. See *Human Trafficking Training*, SHARED HOPE INT'L, <http://sharedhope.org/what-we-do/prevent/training/> (last visited Jan. 28, 2014).

<sup>80</sup> The Polaris Project is a non-profit organization based in Washington, D.C. whose mission is to combat human trafficking and modern-day slavery. *What We Do*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do> (last visited Jan. 28, 2014). Its work includes a policy advocacy arm, direct social services, training and technical assistance programs, and staffing the National Human Trafficking Resource Center. *Id.*

<sup>81</sup> Washington State has produced a comprehensive, multi-agency model protocol for CSEC youth. See CTR. FOR CHILD. & YOUTH JUSTICE, WASHINGTON STATE MODEL PROTOCOL FOR COMMERCIALY SEXUALLY EXPLOITED CHILDREN 23-29 (2013) [hereinafter WASHINGTON STATE MODEL PROTOCOL], available at <http://www.ccyj.org/Project%20Respect%20protocol.pdf>. The protocol provides guidance for jurisdictions on best practices for interviewing, data collection, information sharing, and service coordination for this population. *Id.* at 25.

<sup>82</sup> The Blue Campaign is a federal program administered through the U.S. Department of Homeland Security that brings together law enforcement, governmental and non-governmental stakeholders to increase awareness and training about human trafficking. *End Human Trafficking*, U.S. DEP'T HOMELAND SECURITY, <https://www.dhs.gov/end-human-trafficking> (last visited Jan. 28, 2014).

<sup>83</sup> *Survivor Led Organizations*, GEMS, <http://www.gems-girls.org/survivor-led-organizations> (last visited Mar. 29, 2014) (providing a list of survivor led organizations in various states).

<sup>84</sup> SAXE ET AL., *supra* note 51, at 278-91.

hold an inherently punitive role, as youth are referred for juvenile justice monitoring based upon the presumption that they are offenders in need of rehabilitation.<sup>85</sup> This paradigm fundamentally undermines the framework for working with CSEC youth, which emphasizes that the child is not to blame for his or her experience.<sup>86</sup> A CSEC-involved youth may have good reason to underreport his or her own experiences to a probation officer for fear that complete candor about the child's involvement in "the Life," which may include abscondence, truancy, and curfew violations, could provide a basis for incarceration or other alternative punishment.

GALs, by contrast, can engage and advocate for implementation of therapeutic services that mitigate the need for secure detention, thus facilitating a CSEC survivor's transition into the community and minimizing the potential for re-traumatization. While a review of currently available therapeutic treatments is beyond the scope of this Article, advocates should inquire into evidence-based modalities, such as Trauma-Focused Cognitive Behavioral Therapy and the Stages of Change Model.<sup>87</sup>

The various public and private agencies that interface with the client will likely produce their own unique case plans for the child (e.g. mental health treatment plans, individual educational plans, family reunification case plans). The GAL should readily review these plans, and when necessary, attempt to reconcile conflicts between the plans. Consider for example, the case of David, a fourteen-year-old high school student who recently returned to the community after a two-month period of sexual exploitation. During this time, he did not attend school; the government initiated a status offender case at the request of his mother, who was concerned with David's habitual runaway behaviors. When David returned home, he expressed a commitment to stabilizing and working with various providers. Upon her appointment to the case, the GAL learned that the school was requesting that David attend after school make-up sessions each day to catch up on missed work while, simultaneously, his probation officer mandated weekly meetings after school at an office downtown. Further, David was required to see a therapist who was only available for sessions during school hours, as well as a community behavioral intervention worker, who David had to visit at least three times per week, as mandated under his health insurance. Although each of these services and recommendations make sense individually, together they create a plan that is confusing and perhaps even logistically impossible.

To the extent that the GAL is able to be actively involved in the case outside of court time, he or she should request that representatives of these various teams attend team meetings regarding the child to encourage cross-agency communication and agree upon a practical schedule for the child. When possible, the GAL should request that these agencies align treatment goals for the child to ensure that there is one consistent plan of care focusing on the same emotional objectives. For example, if David's therapist is working on processing the intense trauma of his CSEC experience during individual therapy, he may naturally manifest some behavioral dysregulation outside of these weekly sessions. To account for this, David's Individualized Education Plan ("IEP") should not reflect a goal of behavioral compliance at all

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<sup>85</sup> *Statistical Briefing Book: Juveniles on Probation*, OFF. JUV. JUST. & DELINQUENCY PREVENTION, <http://www.ojjdp.gov/ojstatbb/probation/overview.html> (last visited Mar. 25, 2014).

<sup>86</sup> Katherine Chon, *What Communities Need to Know About Child Sex Trafficking*, U.S. DEP'T HEALTH & HUM. SERVS. ADMIN. FOR CHILD. & FAM. (Aug. 1, 2013), <http://www.acf.hhs.gov/blog/2013/08/what-communities-need-to-know-about-child-sex-trafficking>.

<sup>87</sup> See generally, CHILD WELFARE INFO. GATEWAY, U.S. DEP'T HEALTH & HUM. SERVS., TRAUMA-FOCUSED COGNITIVE BEHAVIORAL THERAPY FOR CHILDREN AFFECTED BY SEXUAL ABUSE OR TRAUMA (2012), <https://www.childwelfare.gov/pubs/trauma/trauma.pdf> ("[Trauma-focused cognitive behavioral therapy (TF-CBT)] - based on learning and cognitive theories- addresses distorted beliefs and attributions related to the abuse and provides a supportive environment in which children are encouraged to talk about their traumatic experience."); WALKER, *supra* note 26, at 26 (describing the Stages of Change Model (SCM), which focuses on "patient readiness to make change, appreciating barriers to change and helping patients anticipate relapse").

times; instead, a goal that "David will request a pass to visit his in-school guidance counselor when feeling upset" may be more realistic and consistent with addressing his needs.

While promoting information sharing, GALs must manage the concomitant responsibility of protecting client confidentiality and limiting the unnecessary disclosure of sensitive information. While best-interest GALs generally have the ability to share information about the child if doing so furthers the child's best interest,<sup>88</sup> this does not necessarily mean that each and every detail should be divulged. In David's case, for example, it may be helpful for school staff to have a copy of his most current psychological evaluation, which contains information about his Attention Deficit Hyperactivity Disorder Diagnosis and the results of some recent educational testing. Before sharing this document however, the GAL should redact it with an eye toward omitting irrelevant details that may be embarrassing for David (e.g. he was previously diagnosed with a sexually transmitted infection) or information that could hinder ongoing work on David's case (e.g., David's psychiatrist is recommending a different school setting for which the GAL may advocate during a future due process hearing).

Although GALs do not necessarily have clinical credentials, they come to the table with the knowledge and training to make these common sense requests.<sup>89</sup> Moreover, while various professionals are obliged to work the case in the matter proscribed by their specific organization, be it a school, public agency, or social services provider, the GAL's ultimate allegiance is to his or her client. Thus, the GAL can and should feel entitled to make requests for flexible procedures and protocols that serve the client's best interest. As appropriate, GALs should invoke local regulations to compel systemic involvement when doing so might deter the youth's involvement in the court system. According to a recent set of national best practices for representing status offenders:

Children's attorneys and courts should closely assess whether the status offense referral relates to the child's disability and analyze whether the referring system made reasonable efforts to address the disability and avoid court involvement. Children's attorneys may consider requesting that the court hold a child's case in abeyance pending the delivery of appropriate services or request dismissal if pre-court accommodations were insufficient.<sup>90</sup>

Thus, a GAL may help the child avoid receiving school detention by shifting accountability to the systems assigned to render services to the child aimed at addressing the underlying issues for receiving detention. Where such systems fail to do so, the GAL should request sanctions, such as ordering the service provider to file weekly updates on the case with the court, or ordering an

<sup>88</sup> ABA STANDARDS, *supra* note 47 (RULE B-2) (comment); *see also* Hollis R. Peterson, *In Search of the Best Interests of the Child: the Efficacy of the Court Appointed Special Advocate Model of Guardian ad Litem Representation*, 13 GEO. MASON L. REV. 1083, 1110 (2006) ("Allowing guardians ad litem to voluntarily disclose what their client has told them if they believe it would serve their client's best interests, but not forcing them to reveal anything which they believe might harm the children, frees guardians to pursue the best interests of their charges.").

<sup>89</sup> The National Association of Counsel for Children's Recommendations for Representation of Children provide that competent representation includes "knowledge of placements and services available for the child and services available to the child's family." NACC RECOMMENDATIONS, *supra* note 6, at 6. "Jurisdictions should provide special initial and periodic training to all attorneys in child welfare proceedings covering substantive law (federal, state, statutory, regulatory, and case law), procedure, trial advocacy, child welfare and child development." *Id.* The American Bar Association's Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases similarly recommends that continuing education for GALs should include not only legal training, but also information about "child development, needs, and abilities.... Information on the multidisciplinary input required in child-related cases...[and] [i]nformation on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/ diagnostic and treatment services." ABA STANDARDS, *supra* note 47 (Rule I-2).

<sup>90</sup> *See* COAL. FOR JUVENILE JUSTICE, *supra* note 29, at 47.

administrator from the relevant agency to appear at the next scheduled hearing. By holding all members of the child's team accountable for the well-being of the commercially sexually exploited child, the team will develop more efficient ways of delivering services.

#### F. Medical Advocacy

GALs routinely monitor a child's physical health as part and parcel of their duties.<sup>91</sup> The federal Fostering Connections to Success and Increasing Adoptions Act<sup>92</sup> requires localities to "detail the steps that are or will be taken to ensure the continuity of health care services, including the possibility of establishing a medical home for every child in care and what will be done to ensure the oversight of prescription medications, including psychotropic drugs."<sup>93</sup> GALs should act to ensure that the client is linked to a consistent and quality health care provider. "Whenever a change in placement is needed, they should try to keep the child in the same geographic area and make sure all the professionals involved in the case understand the importance of maintaining the child's medical home."<sup>94</sup>

For a CSEC client, GALs should request particularized sexual-health education and advocate for comprehensive physical health screenings, including HIV prophylaxis if appropriate, after each and every abscondence. In this way, the CSEC-informed GAL continually educates and reminds the court and parties that each runaway episode should not be treated routinely or likened to non-CSEC runaway experiences.

Furthermore, the GAL should ensure that the client has access to safe and consistent methods of contraception. If there are periods where a female client is incarcerated or hospitalized, these may be opportune moments to ensure that the client meets with a physician and accesses appropriate long-term contraception (such as the Depo-Provera shot,<sup>95</sup> or an intra-uterine device), if she so desires.

Finally, the GAL should monitor whether the client is eligible for and enrolled in appropriate health insurance programs, such as Medicaid. Pursuant to the federal Patient Protection and Affordable Care Act of 2010<sup>96</sup>, states must "offer youth who exited foster care extended Medicaid coverage to up to their 26th birthday if the youth was in care on their 18th birthday (or older)."<sup>97</sup>

#### G. Placement and Family Assessment

GALs maintain a global view of the case, and are thus uniquely positioned to make placement recommendations that integrate a child's various mental health, medical, social and educational needs. GALs may be called upon by the court to make recommendations about what type of placement is in a child's best interest, whether family location and reunification is appropriate, and what additional services (housing, therapeutic intervention, etc.) may facilitate this transition.

GALs should visit their client's living environment to better understand the strengths and weaknesses of the child's home life.<sup>98</sup> GALs are trained to conduct these types of custodial

<sup>91</sup> ABA STANDARDS, *supra* note 47 (RULES C-2(1), C-4(5), H-3, K-2).

<sup>92</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

<sup>93</sup> Eva J. Klain, *Addressing the Health Needs of Court-Involved Youth* (Mar. 15, 2011),

<https://apps.americanbar.org/litigation/committees/childrights/content/articles/spring2011-health-PIPPAH-Fostering-Connections-Act.html>.

<sup>94</sup> *Id.*

<sup>95</sup> Depo-Provera is a hormonal contraceptive birth control shot that is given once every three months. *Depo-Provera (contraceptive injection)*, MAYO CLINIC, <http://www.mayoclinic.org/tests-procedures/depo-provera/basics/definition/prc-20013801> (last visited Apr. 1, 2014).

<sup>96</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).

<sup>97</sup> *See* Klain, *supra* note 93.

<sup>98</sup> ABA STANDARDS, *supra* note 47 (RULE C-2(4)) (comment).

assessments and transform their opinions into legal advocacy.<sup>99</sup> Where an existing placement is imperfect, GALs should consider asking the court to order a placement to comply with additional conditions, with an eye toward enhancing safety. These include: curfews, protocols for unannounced visits by the assigned probation officer or social worker, adult-monitored access to the Internet, and plans for supervision in the community, such as transportation to and from school. On the other hand, for stated-interest attorneys whose client desires a placement that the court is otherwise disinclined to approve, it is worthwhile to consider whether these or similar conditions would be acceptable to the client and caregiver, and furthermore persuade the court to permit the placement, at least on a trial basis.

Home visits are critically important in cases where the youth is CSEC-vulnerable or CSEC-involved, especially when there is suspicion that a family member may be the perpetrator, or is benefiting (financially or otherwise) from the child's exploitation. In some situations, the suspected perpetrator resides in the family home or, alternatively, where the parent is unwilling or unable to provide appropriate supervision to ensure that their child remains safely at home.<sup>100</sup> In these cases, referral to the local child welfare authority may be appropriate.

In the most serious situations, placement in a secure environment may be required to protect the child's safety and prevent runaway behaviors. In Washington, D.C., for example, following the recommendation of a clinician, the court will order the child to be held for psychiatric observation and treatment.<sup>101</sup> Although mental health hospitalization is not ideal, in the authors' experience it is preferable to detention, which entrenches false perceptions that the child is an offender and may even increase the likelihood of future delinquent behavior.<sup>102</sup>

Sometimes, placement of a commercially sexually exploited child in a psychiatric residential treatment facility must be considered. Unfortunately, "[t]here is little to no reliable research to support the presumption that residential treatment centers improve behavioral problems."<sup>103</sup> While these facilities may be of dubious efficacy, they do provide one thing: physical security. Thus, for clients whose frequent abscondence prevents interventions and services from initiating, the GAL may consider exploring these placements. This may prove the most efficient way to link the child to services and transition the child back to the community as soon as he or she is psychiatrically stabilized and at a decreased risk of running away.

#### IV. ADDRESSING CSEC AS A SPECIAL EDUCATION ATTORNEY

In addition to GALs, special education attorneys also serve a vital role in working with the parents and families of children who are commercially sexually exploited. These attorneys can assist in identifying children who are commercially sexually exploited and ensuring that those children, whether or not the children are removed from the exploitative situation at the time, receive appropriate school-based services to address the impact of CSEC involvement.

<sup>99</sup> See Peterson, *supra* note 88, at 1094 (explaining the GAL may interview any relative or "professional who has a relationship with the child"). "Above all, the guardian ad litem's primary duty is to conduct an impartial investigation of the case, make an independent assessment, and render a report or recommendation to the court . . ." *Id.*

<sup>100</sup> These examples are based on the authors' experience.

<sup>101</sup> D.C. CODE § 16-2315(b) (2014).

<sup>102</sup> See COAL. FOR JUVENILE JUSTICE, *supra* note 29, at 12.

<sup>103</sup> Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 454 (2013).

CSEC is both a general and special education issue. First, research has established a growing link between unmet special education needs<sup>104</sup> and school truancy and failure, both of which are risk factors and signs that a child is being commercially sexually exploited.<sup>105</sup> Schools are best positioned to track truancy, and have a federal mandate under the Individuals with Disabilities Education Act ("IDEA")<sup>106</sup> to track students who struggle in their school settings.<sup>107</sup> Recently, schools have even been given guidance on screening for CSEC from the Department of Education.<sup>108</sup> Schools therefore have a critical role in identifying children who are being commercially sexually exploited.

Second, schools have a federal obligation to provide appropriate special education and related services to meet the unique needs of disabled children.<sup>109</sup> The impact of commercial sexual exploitation, as will be discussed at length below, can exacerbate the impact of a child's existing disabilities, or result in a child developing disabilities.<sup>110</sup> Special education attorneys play a critical role in advocating for the school system to meet the unique needs of a commercially sexually exploited child, especially where service planning may be necessary to ensure a child's needs are met.

The next section begins with a discussion of why CSEC is an educational issue, focusing on the Department of Education's guidance on CSEC issued to schools, and the role of truancy and school attendance as precursors for disability *and* commercial sexual exploitation. This Article will then move on to discuss the special education elements of CSEC in the legal context, including the school's obligations to identify a commercially sexually exploited child under Child Find,<sup>111</sup> and when a commercially sexually exploited child may be entitled to specialized school-based services.<sup>112</sup>

#### A. *Why is CSEC an Educational Issue?*

Schools are integral to CSEC prevention and in addressing the needs of commercially sexually exploited children when they return to their communities. All children, especially young

<sup>104</sup> Some research suggests that students with disabilities are independently at an increased risk of being commercially sexually exploited. *Topics of Special Interest*, U.S. DEP'T STATE, <http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm> (last visited Mar. 25, 2014).

<sup>105</sup> "Children with school-related problems, such as truancy and learning disabilities, may also be vulnerable to recruitment." WALKER, *supra* note 26, at 18.

<sup>106</sup> 20 U.S.C.A. § 1400 (West 2014). The Individuals with Disabilities Education Act was reauthorized and amended in 2004 with the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat 2647 (codified as amended in 20 U.S.C.A. ch. 33). Although the IDEA was renamed as the "IDEA, 2004," the acronym, IDEA is still commonly used when discussing the statute. In this Article, reference to the IDEA includes the relevant sections of 20 U.S.C.A. as amended by the Improvement Act.

<sup>107</sup> A parent of a child, or a State or local educational agency "may initiate a request for an initial evaluation to determine if the child is a child with a disability." *Id.* § 1414 (a)(1)(B). A reevaluation of each child with a disability shall occur at least once every three years, unless otherwise necessary. *Id.* § 1414 (a)(2)(A)-(B).

<sup>108</sup> See HUMAN TRAFFICKING, *supra* note 23 (listing "[i]ndicators that school staff and administrators should be aware of concerning a potential victim").

<sup>109</sup> See *infra* Part III (B); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982). "The State must have in effect policies and procedures to ensure that - [a]ll children with disabilities residing in the State, . . . who are in need of special education and related services are identified, located, and evaluated[.]" 34 C.F.R. § 300.111 (a)(1)(i) (2014).

<sup>110</sup> See *infra* Part III (B)(1)(i); see also U.S. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 9 (2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/index.pdf> [hereinafter A REVIEW OF THE LITERATURE] (explaining the "correlation between school-related problems, most notably learning disabilities, and sexual exploitation").

<sup>111</sup> 34 C.F.R. § 300.111.

<sup>112</sup> While there is an absence of case law specific to the issue of the special education needs of commercially sexually exploited children, where helpful, the authors have provided citations to parallel case law that can assist special education attorneys advocating to ensure vulnerable students receive the services they need.

adolescents, spend a majority of their day in school.<sup>113</sup> Consequently, both the White House and the United States Department of Education have recognized that schools and educators serve as front-line screeners for human trafficking victims.<sup>114</sup> To support schools in this role, the Department of Education's Office of Safe and Healthy Students ("OSHS") has developed a web page to provide schools with information and resources related to human trafficking.<sup>115</sup> The OSHS has also developed a fact sheet on how trafficking impacts schools and provides information to school staff on how to identify and report child trafficking.<sup>116</sup>

In addition to national recognition that schools should be informed about commercial sexual exploitation, research links a child's poor performance in school to commercial sexual exploitation, especially when a child with a disability does not receive appropriate services to address his or her educational needs. According to a 2009 review of the available literature on human trafficking, "the later the disability is diagnosed and an appropriate educational plan put in place, the greater the likelihood of the girl experiencing failure in school and/or low self-esteem, making her vulnerable to exploitation."<sup>117</sup> Although a child's poor school performance and failure to receive services to address that school performance are not necessarily the sole triggers for a child becoming a victim of commercial sexual exploitation, providing interventions to address a child's poor school performance can be invaluable in mitigating that child's risk for exploitation.

While there are often multiple factors contributing to a child's poor school performance, this Article will focus on truancy, given its role as a risk factor and indicator of commercial sexual exploitation, its relationship to disability (and unidentified disability and trafficking), and the obstacles that children with poor school attendance may face in receiving appropriate school services.

The "Updated Literature Review on Truancy," a report produced by the Center for Children & Youth Justice in 2011, summarizes several indicators that a child is at risk of becoming truant.<sup>118</sup> The predictors of truancy relevant to this Article include: poor attendance, weak academic performance, being behind two or more grade levels in reading or math, and failing school.<sup>119</sup> Hence, children who struggle in school at an early age, particularly in these areas, are at risk of becoming truant from school if they do not receive intervention.<sup>120</sup>

When a school fails to appropriately address a student's disability within the school setting, children are also at risk for truancy or dropping out of school entirely.<sup>121</sup> This, in turn,

<sup>113</sup> See *Average Hours per Weekday Spent by High School Students in Various Activities*, BUREAU OF LABOR STATS., <http://www.bls.gov/tus/charts/chart8.pdf> (last visited Jan. 28, 2014) (indicating that high school students spend the largest portion of hours in a twenty-four-hour period sleeping and second largest portion in school).

<sup>114</sup> See NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, *supra* note 19; *Fact Sheet: The Obama Administration Announces Efforts to Combat Human Trafficking at Home and Abroad*, WHITE HOUSE (Sept. 25, 2012), <http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficking>; WALKER, *supra* note 26, at 23 (listing teachers as a category of "first responders" to correctly identify CSEC victims and "reduce the number of children who are criminalized as well as increase their ability to access services and treatment"); HUMAN TRAFFICKING, *supra* note 23.

<sup>115</sup> *The Exploitation of Children and Forced Child Labor or Human Trafficking*, READINESS & EMERGENCY MGNT. FOR SCHS. TECHNICAL ASSISTANCE PROGRAM, [http://rems.ed.gov/display.aspx?page=additional\\_resources\\_Prostitution\\_of\\_Children\\_Forced](http://rems.ed.gov/display.aspx?page=additional_resources_Prostitution_of_Children_Forced) (last visited Mar. 3, 2014); HUMAN TRAFFICKING, *supra* note 23.

<sup>116</sup> HUMAN TRAFFICKING, *supra* note 23.

<sup>117</sup> A REVIEW OF THE LITERATURE, *supra* note 110, at 9-10.

<sup>118</sup> See TONISHA JONES ET AL., CTR. FOR CHILDREN & YOUTH JUSTICE, *UPDATED LITERATURE REVIEW ON TRUANCY: KEY CONCEPTS, HISTORICAL OVERVIEW, AND RESEARCH RELATING TO PROMISING PRACTICES – WITH PARTICULAR UTILITY TO WASHINGTON STATE* (2011), available at <http://www.ccyj.org/uploads/PPO/WSU%20Literature%20Review.pdf>.

<sup>119</sup> *Id.* at 66.

<sup>120</sup> U.S. DEP'T. OF STATE, *TRAFFICKING IN PERSONS REPORT 39* (2012), available at <http://www.state.gov/documents/organization/192587.pdf>.

<sup>121</sup> *Id.*

increases a child's risk of being commercially sexually exploited: "[w]here schools fail to accommodate students with disabilities, high drop-out rates leave them on the streets and at much higher risk of being trafficked into forced begging or other criminal activities."<sup>122</sup> In the context of special education services, children with unidentified disabilities, resulting in truancy, are even more vulnerable because (1) they are engaging in behavior that is a risk factor for commercial sexual exploitation, and (2) as disabled children who are experiencing school failure, they demonstrate other risk factors for commercial sexual exploitation.

Schools should follow the guidance provided by the Department of Education directing them to identify children that are commercially sexually exploited for all general education students. Schools can enhance their identification of children who might be commercially sexually exploited by ensuring an internal response to truancy that is thoughtful, research-based and therapeutic as needed (as opposed to relying solely on a referral to the juvenile justice system and notes sent home to the parent). In addition to the preventative measures schools can take surrounding truancy to address commercial sexual exploitation for all students, schools may have additional obligations to children with disabilities under IDEA, both in identifying children with disabilities who are CSEC involved, and ensuring that those students receive appropriate special education services.

### B. Why is CSEC a Special Education Issue?

Commercial sexual exploitation is also a critical special education issue because of the school-based services commercially sexually exploited youth may be entitled to, either because they were not appropriately identified as needing services prior to being exploited, or because the child returns to the community with new special education needs. This section will explore schools' obligations to identify and serve children with disabilities (and the implications this has for a school's obligations to commercially sexually exploited children), and will also discuss the types of school-based services to which commercially sexually exploited children may be entitled as a result of the impact of their experiences.

#### 1. A School's Child Find Obligations and Screening for CSEC.

Under the Individuals with Disabilities Education Act ("IDEA"), states must have policies and procedures in place to locate, identify, and evaluate a student if the student has, *or is suspected of having*, a disability.<sup>123</sup> This is frequently referred to as a state or school district's "Child Find" obligations.<sup>124</sup> Under Child Find, a school district must refer a child for assessment if the school suspects the child has a disability, independent of whether or not the parent has requested the child be evaluated for special education and related services.<sup>125</sup>

A school's obligations under Child Find dovetail with a school's obligation to screen for risk factors and warning signs for commercial sexual exploitation. Several CSEC warning signs overlap with traditional indicators that a child is suspected of having a disability and is in need of an evaluation for special education and related services.<sup>126</sup> These include school-avoidant

<sup>122</sup> *Id.*

<sup>123</sup> See 34 C.F.R. § 300.111 (2014) (emphasis added).

<sup>124</sup> *What is Child Find?*, WRIGHTSLAW, <http://www.wrightslaw.com/info/child.find.index.htm> (last visited Mar. 8, 2014).

<sup>125</sup> *Id.*; see 20 U.S.C.A. § 1414 (a)(1)(B) (West 2014) (indicating that "either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability").

<sup>126</sup> See Dep't of Educ., State of Haw. v. Cari Rae S., 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001) (finding that child's school attendance issues and behavioral problems should have put school on notice of child's potential eligibility for special education and related services); see also Bedford City Sch. Dist., 112 LRP 37604 (OCR 05/18/12) (finding that student's depression and academic deterioration should have put school on notice that student needed to be evaluated for special education services).

behavior (such as missing classes or school days), sudden changes in behavior, and depressed or irritable moods.<sup>127</sup>

Special education attorneys can advocate for commercially sexually exploited children who have not been identified for special education and related services by linking a school's Child Find obligations to a child's problems in school.<sup>128</sup> For example, if an attorney suspects a child is being commercially sexually exploited (and as a result has been missing school), the attorney can advocate that the school should evaluate the student *because* the student is missing school and acting differently than the student has in previous school years. Shifting the narrative from what the child is doing wrong in school to addressing the root of the child's changed behavior can be a helpful tool in determining whether or not the child has an unidentified disability that is contributing to their problems in school, and what services can be put in place. On a practical level, this advocacy may take the form of requesting the school to evaluate a previously unidentified disabled child and specifically assess the reasons for the child's attendance issues, request the student be found eligible for special education and related services based on data collected outside the school, and where the school refuses or has failed to identify an eligible student, providing compensatory education services (like tutoring or therapy) to help the child recoup any harm they have suffered from not having appropriate services in place.<sup>129</sup>

Under the IDEA, children with disabilities may be entitled to an Individualized Education Program ("IEP") as the result of several, statutorily defined disability classifications.<sup>130</sup> These classifications include: Specific Learning Disability ("SLD"); Intellectual Disability ("ID"); Speech and Language Impairment ("SLP"); Other Health Impairment ("OHI"); and Emotional Disturbance ("ED").<sup>131</sup> While commercially sexually exploited children may be eligible for services under more than one of these classifications, oftentimes, ED is a disability classification that is both harder for schools to identify, but can also be the appropriate disability classification for children who develop mental health diagnoses as a result of their trafficking experiences.<sup>132</sup>

Under the IDEA, a child may be eligible for special education as a student with an ED if the child has a condition (including a diagnosed mental health impairment) that "adversely affects the child's educational performance," and where the child exhibits certain characteristics (delineated in regulations) "over a long period of time."<sup>133</sup> Commercial sexual exploitation can have a severe impact on a child's mental health profile, and children who are or have been commercially sexually exploited may develop depression, anxiety, Post-Traumatic Stress Disorder ("PTSD"), and other mental health diagnoses. Hence, commercially sexually exploited children often carry a mental health diagnosis that impacts their learning. Further, the characteristics that qualify a child for an ED disability classification under the IDEA correspond with the warning signs of CSEC.<sup>134</sup> These signs include, but are not limited to: an "inability to build or maintain satisfactory interpersonal relationships with peers and teachers" (compare with

<sup>127</sup> HUMAN TRAFFICKING, *supra* note 23.

<sup>128</sup> See *infra* Part IV(B)(1) for a discussion of correlation between CSEC factors and Emotional Disturbance disability classification criteria.

<sup>129</sup> See *infra* notes 152-156 (describing due process complaint remedies under the IDEA for parents who disagree with the services their child is receiving).

<sup>130</sup> 20 U.S.C.A. § 1414 (b)(4) (West 2014); Letter to Clark, 48 IDELR 77 (OSEP 2007). An IEP "means a written statement for each child with a disability that is developed, reviewed, and revised in accordance" with the IDEA. 20 U.S.C.A. § 1414 (d)(1)(A)(i).

<sup>131</sup> *Categories of Disability Under IDEA*, NAT'L DISSEMINATION CTR. FOR CHILD. WITH DISABILITIES 2, nichcy.org/disability/categories (last visited Mar. 3, 2014).

<sup>132</sup> This conclusion is based on the authors' experience.

<sup>133</sup> *Categories of Disability Under IDEA*, *supra* note 131; 34 C.F.R. § 300.8(c)(4) (2014).

<sup>134</sup> See CHILDREN'S ADVOCACY CTR. OF SUFFOLK CNTY., *supra* note 24 (listing potential warning signs of CSEC). The argument put forth in this Article, however, is not that the school should be on notice that a child has an emotional disturbance, but that if a school district is properly screening for potential disabilities, emotional disturbance characteristics would be noted.

a child acting fearful or withdrawn), exhibiting "inappropriate types of behavior or feelings under normal circumstances" (compare with a child's inappropriate sexual language or behavior, or truancy issues), and demonstrating "[a] general pervasive mood of unhappiness or depression."<sup>135</sup> Reasonably diligent school staff would observe many, if not most, of these indicators in a commercially sexually exploited child, underscoring the importance of the school as a screener for potential trafficking.<sup>136</sup> Further, educators are required by federal law to be on alert for changes in behavior or behavioral problems in school, which indicate that a child might need to be assessed for a disability.<sup>137</sup>

The obligation of schools to screen for CSEC, both from the guidance provided by the U.S. Department of Education and as part of schools' federal obligations under the IDEA,<sup>138</sup> creates a companion mandate for special education attorneys to be vigilant in watching for the signs of CSEC in their own case loads, particularly when a child is struggling in school and exhibiting other warning signs of CSEC.<sup>139</sup> While a special education attorney may not want to share his or her concerns with the school, in an effort to protect the student's privacy (and should not do so without directly consulting with his or her client), a special education attorney is in an ideal position to ring the alarm that CSEC should be considered as part of the child's special education eligibility process. The following section will address the types of school-based services a child who has experienced CSEC may need after the child has been referred and found eligible for special education and related services.

*i. Children may develop special education needs as a result of having been commercially sexually exploited*

While some commercially sexually exploited children may be eligible for special education services before they are victimized, others may return to the school system with new or more extensive special education needs that schools must address to provide students with the mandated free and appropriate public education ("FAPE").<sup>140</sup> Immediate provision of services to this population is imperative, because absent swift and appropriate action, a child's recovery is undermined and the child may be more vulnerable to repeated victimization or involvement with commercial sexual exploitation.

<sup>135</sup> See 34 C.F.R. § 300.8(c)(4)(i)(D); see also Los Angeles Unified Sch. Dist., 107 LRP 27850 (SEA CA 2007) (finding that a student is not required to have a diagnosis of depression to be eligible under this criteria).

<sup>136</sup> In highlighting the prime position of the front-line educator to screen for CSEC, it is not the opinion of the authors that the role of the educator is to screen for CSEC and determine whether a child has been victimized or is at risk, just like it is not the role of an educator alone to determine whether a child is eligible for special education and related services, as this is a determination based on data collected by a full team, after an initial referral has been made. See 20 U.S.C.A. § 1414 (b)(2). However, since educators should, under federal law, consider referring students with sudden mood changes or behavioral problems for evaluations, see 34 C.F.R. § 300.8 (c)(4)(i) (listing emotional disturbance as a disability entitling a child to an evaluation special education services), educators could easily adopt the same practices in initiating referrals or raising concerns about CSEC, using the risk factors listed by the U.S. Department of Education as guidance. See HUMAN TRAFFICKING, *supra* note 23. Once these students have been referred, they should be thoroughly evaluated and then the student's family and team can assess what services the student needs in and out of school and whether or not the student is at risk for or has experienced CSEC.

<sup>137</sup> See 34 C.F.R. § 300.111.

<sup>138</sup> *Id.*; see HUMAN TRAFFICKING, *supra* note 23.

<sup>139</sup> See PETER LEONE & LOIS WEINBERG, CTR. FOR JUVENILE JUSTICE REFORM, ADDRESSING THE UNMET EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN THE JUVENILE JUSTICE AND CHILD WELFARE SYSTEMS 11, 48-49 (2010), available at <http://cjjr.georgetown.edu/pdfs/ed/edpaper.pdf>.

<sup>140</sup> All students with disabilities are entitled to a free, appropriate, public education ("FAPE"), and more specifically, special instruction designed to meet the unique needs of a child with a disability provided at no cost to the child's parent or educational decision maker. See 34 C.F.R. § 300.39(a)(1); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 182 (1982). In *Rowley*, which addressed a child's right to services under the Education for All Handicapped Children Act (the precursor to the IDEA), the Supreme Court held that FAPE mandates that school districts provide educational services tailored to the "unique needs" of a child with a disability. *Id.* at 181. However, it only mandates that schools provide the "basic floor," not the best education possible. *Id.* at 201.

CSEC can have a devastating impact on a child's physical and mental health.<sup>141</sup> Further, if the child was exposed to drugs during exploitation, this may also impact the child's brain development even after returning to the community and receiving treatment services.<sup>142</sup> All of these conditions may severely impair or alter a student's capacity and attention for learning. Hence, a child who previously did not require specialized services may meet the criteria for eligibility during or after being commercially exploited.

Pursuant to the IDEA,<sup>143</sup> the state must provide a free and appropriate education to all children with disabilities, working to meet the unique needs of each child.<sup>144</sup> To receive special education services, a child must not only have a disability that meets the IDEA criteria,<sup>145</sup> but the student must also be adversely impacted in the educational setting as a result of that disability, to the extent that the student requires special education or other services to receive an "educational benefit"<sup>146</sup> in school.<sup>147</sup> In determining whether a child is adversely impacted by his or her disability, a review of a student's academic achievement alone is not sufficient, as "[e]ducational performance means more than a child's ability to meet academic criteria. It must also include reference to the child's development of communication skills, social skills, and personality."<sup>148</sup>

If a child is adversely impacted by his or her disability in the educational setting, the child's school must provide services to meet the child's needs through an Individualized Education Program ("IEP").<sup>149</sup> An IEP is a document that provides a roadmap for how a student's services<sup>150</sup> should be delivered, including: the student's current level of functioning, the student's goals in each academic area (and, where applicable, social, emotional, occupational, or other area), which specific services the child needs, and where the child will receive those services.<sup>151</sup> While the IDEA mandates that all students receive a FAPE, it also lays out procedures for how a parent, educational decision maker (e.g., a guardian or foster parent), or school district may take action if the parent and the school disagree about what constitutes a FAPE for an individual student.<sup>152</sup> If a parent disagrees with a school's actions in providing a FAPE, or if the parent and the school district disagree about the child's eligibility, the parent may

<sup>141</sup> WALKER, *supra* note 26, at 16; *see also* A REVIEW OF THE LITERATURE, *supra* note 110, at 12-13 (describing the correlation between deviant behavior, truancy, and poor mental and physical health).

<sup>142</sup> *See* L.M. Squeglia et al., *The Influence of Substance Use on Adolescent Brain Development*, 40 CLINICAL EEG & NEUROSCI. 31, 32 (2009) (discussing the impact of alcohol and marijuana use on cognitive processing and development); *DrugFacts: MDMA (Ecstasy or Molly)*, NAT'L INST. ON DRUG ABUSE (Sept. 2013), <http://www.drugabuse.gov/publications/drugfacts/mdma-ecstasy>. In the authors' experience, services provided to CSEC survivors can take a wide variety of forms, and may be contingent upon the funding available through the child's health insurance or the court system. Treatment services for commercially sexually exploited children can include: individual therapy, group therapy, intensive home-based therapy, psychotropic medication, survivor-led activities or placement in a psychiatric residential treatment facility.

<sup>143</sup> Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 (West 2014).

<sup>144</sup> *See Rowley*, 458 U.S. at 182; 34 C.F.R. § 300.39(a)(1) (defining "special education" as "specially designed instruction ... to meet the unique needs of a child with a disability").

<sup>145</sup> 20 U.S.C.A. § 1414(b)(4); *see supra* Part III (B)(1)(i) for a discussion of disability classifications.

<sup>146</sup> *Rowley* established that in order to determine whether a child was receiving educational benefit (or could receive educational benefit as a result of appropriate versus inappropriate school programming) it must be determined whether a student was able to make meaningful progress or gains in his or her area of need. *Rowley*, 458 U.S. at 200-02.

<sup>147</sup> *See* 34 C.F.R. § 300.8 (a)(1)-(2)(i).

<sup>148</sup> *See Mr. & Mrs. I. v. Me. Sch. Admin. Dist. No. 55*, No. 04-165-P-H, 2005 U.S. Dist. LEXIS 11401, at \*55 (quoting *Mary P. v. Ill. State Bd. of Educ.*, 919 F. Supp. 1173, 1180 (N.D. Ill. 1996) (internal quotation marks omitted)).

<sup>149</sup> *See* 34 C.F.R. § 300.320(a).

<sup>150</sup> Services on an IEP can include specialized instruction in a separate classroom ("pull out" or "resource") or in the same classroom ("inclusion"), counseling, occupational therapy, speech and language therapy, physical therapy and any other service a child may need to receive educational benefit. *See Related Services*, NAT'L DISSEMINATION CTR. FOR CHILD. WITH DISABILITIES, <http://nichcy.org/schoolage/iep/iepccontents/relatedservices> (last updated Mar. 2013).

<sup>151</sup> 34 C.F.R. §§ 300.320(a)-300.324.

<sup>152</sup> *Id.* § 300.507(a)(1).

file a due process complaint (with or without counsel)<sup>153</sup> against the school and request an informal administrative hearing over the dispute, before an impartial hearing officer.<sup>154</sup> The hearing officer then has the authority to affirm the school's decision, or overrule the decision<sup>155</sup> and ultimately require that the school take the actions requested by the parent, including: finding a child eligible for services; developing an IEP for the child;<sup>156</sup> ordering the school district to pay for the student to attend a non-public school program;<sup>157</sup> providing additional services (known as "compensatory education") to address any harm that has come to the child from not receiving appropriate services previously.<sup>158</sup>

As noted above, as a consequence of a child's CSEC experience, the child may return to the community with a new mental health diagnosis that requires significant school-based intervention. Further, even if a child who remains in school is suspected of currently being a victim of CSEC by a child's teachers, parents, or school-based service providers (as opposed to returning to the community after having been commercially sexually exploited), school-based services may still be necessary to help the child.<sup>159</sup> The following sections explore specific advocacy strategies and obstacles to addressing potential special education needs of students who have survived, or still are experiencing commercial sexual exploitation.

*ii. Case study: Anne*

Anne<sup>160</sup> is a sixteen-year-old high school sophomore who has just returned to school after being abducted at age fourteen by a stranger and commercially sexually exploited for several months. Anne spent one year in an out-of-state residential treatment facility before returning to her community and school district. Anne did not share much information about her exploitation with her treatment providers, but assessments following her return to the community indicated that she was frequently given drugs and was psychologically and physically abused during the period in which she was being commercially sexually exploited. During her time in residential treatment, Anne was diagnosed with several mental health conditions, including PTSD.

Although Anne was removed from the traditional school settings for almost two years between her exploitation and residential treatment, the doctors and therapists at her residential program made several observations about the impact of Anne's new diagnosis. Anne frequently has flashbacks that cause her to blackout and lose track of where she is. She often has panic attacks when she hears loud noises, and she becomes anxious in public settings. Once a very

<sup>153</sup> *Id.* A parent or educational decision maker in this situation may also want to hire a special education attorney or attorney who practices special education law and is experienced in administrative litigation on IDEA matters. Parents can retain these attorneys at a fee and some attorneys may take cases on a contingency basis.

<sup>154</sup> There are no damages in claims under IDEA, but as relief the parent may request the school provide services, take the course of action requested by the parent, and/or provide compensatory services to address any harm that has been caused to the child by the delay in the child receiving the services. *See Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369-70 (1985) (holding that hearing officers have broad discretion under IDEA to award relief, including reimbursement for a non-public educational program). However, remedies under IDEA will generally not include monetary compensatory or punitive damages because they may not be in line with the purpose of the Act. *See Anderson v. Thompson*, 658 F.2d 1205, 1216-17 (7th Cir. 1981).

<sup>155</sup> *See Anatomy of a Special Education Case*, WRIGHTSLAW, [http://www.wrightslaw.com/advoc/articles/anatomy\\_case\\_jaynes.htm](http://www.wrightslaw.com/advoc/articles/anatomy_case_jaynes.htm) (last visited Apr. 6, 2014).

<sup>156</sup> *See generally* *Scott v. D.C.*, No. Civ.A 03-1672 DAR, 2006 WL 1102839 (D.D.C. Mar. 31, 2006) (finding that the school District erred in failing to identify, evaluate, and develop an IEP for a student even when the parent had agreed to the school district attempting alternative intervention strategies).

<sup>157</sup> *See, e.g., Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 234, 246-47 (2009) (holding the parent was entitled to reimbursement from the school district for placing a child in a residential treatment facility to address her learning needs, despite the child having never received special education services previously).

<sup>158</sup> *See, e.g., Reid v. D.C.*, 401 F. 3d 516, 236 (D.C. Cir. 2005).

<sup>159</sup> *See supra* text accompanying notes 143-151 (discussing the rights of all children with disabilities to have appropriate services in place in school).

<sup>160</sup> The case study of Anne does not represent an actual person, but is a composite from some of the children the authors have worked with as well as case studies the authors have reviewed in the course of their research for this Article.

focused student, she now struggles to concentrate on her schoolwork, as she becomes easily distracted by noises or other stimuli.

Anne's educational decision maker,<sup>161</sup> her mother, immediately provides Anne's school with the evaluations that diagnose Anne with PTSD, and requests that she be provided special education and related services. Due to Anne's tendencies to panic in group settings, Anne's mother requests that the school provide Anne with a full-time IEP, be put in a separate special education setting, and be provided extensive behavioral support services. Anne's school refuses, and instead argues that Anne has been unavailable for learning. Further, the school argues that while Anne may need more services than she did prior to her CSEC experience, the school cannot remove her from her non-disabled (or "typically developing") classroom and put her in a separate setting without some indication from Anne that she needs a more restrictive environment. Anne's mother is worried, however, that putting Anne in a large setting without appropriate support services will result in Anne missing more time in school because of her fear of being in a large public setting with many other children.

Anne's mother may request that her child be found eligible for services, or file a due process hearing against the school for failing to find Anne eligible for services and for failing to provide her with an appropriate educational placement.<sup>162</sup> In response, the school may argue several points to support its denial of the level of services requested by Anne's mother. First, the school may claim that while Anne now has a disability, Anne has not been available for learning or placed in a school setting where she has demonstrated her education is adversely impacted by her disability. The school may also assert that Anne's inability to learn is possibly due to other factors,<sup>163</sup> including her trafficking experience

Unsurprisingly, there does not appear to be a body of established IDEA-rooted case law specific to CSEC survivors, given that the domestic aspect of the issue has only received increased attention in the last decade. Instead, parents, educational decision makers, and advocates for CSEC survivors may draw from the IDEA and existing parallel case law to advocate for the needs of the CSEC survivor in the school setting. General case law supporting a parent's right to demand appropriate services to meet a child's current level of need (rather than mandating the school be allowed to gradually build up to more services) may be useful.<sup>164</sup>

### C. Using IDEA to Address the Educational Impact of CSEC

Child survivors of CSEC with disabilities have the same right as any other student with a disability to receive special education and related services reasonably calculated to provide an educational benefit.<sup>165</sup> This next section will explore some advocacy strategies for ensuring that the needs of CSEC survivors are met in the school setting.

<sup>161</sup> Under the IDEA, children do not hold their own special education rights until they have reached the age of majority. 34 C.F.R. § 300.520(a) (2014). Different jurisdictions, however, have different local regulations as to how and when rights transition to the student when he or she reaches adulthood. For example, in the District of Columbia, children automatically become their own educational decision makers when they turn eighteen. D.C. MUN. REGS. tit. 5, §3009.7 (2013). All children with disabilities are entitled to receive special education services through age twenty-one, if they have not graduated with a regular high school diploma, *see* 34 C.F.R. § 300.101(a), although some jurisdictions have extended this to age twenty-two. *See* D.C. MUN. REGS. tit. 5, § 3002.1(c) (maintaining a student's eligibility for services until his or her twenty-second birthday).

<sup>162</sup> *See* 34 C.F.R. § 300.507(a); *see also supra* text accompanying notes 152-158 (discussing a student's eligibility under the IDEA for special education services, and the due process complaints available to students and their parents who disagree with the services a student receives).

<sup>163</sup> *See* 34 C.F.R. § 300.8(c)(4).

<sup>164</sup> *See generally* *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230 (2009) (holding that a child could be entitled to placement and funding at one of the most restrictive, high service educational settings (a residential treatment facility) despite previously having not been found eligible for special education and related services by the school district).

<sup>165</sup> *See supra* notes 130-151 and accompanying text.

### 1. Attorneys Should Provide Strong Evaluations and Data to the School in Support of a CSEC Survivor's Special Education Needs as Soon as Possible

By providing evaluations and other data available about the child's new needs to the school as soon as possible<sup>166</sup> and requesting that the materials be reviewed to determine the child's eligibility for special education related services, the school will be better prepared to address the needs of the child. In Anne's case, one way to expedite Anne's claim for services would have been for Anne's mother to provide the school district with Anne's evaluations from residential treatment before she returned to the school district.<sup>167</sup> The school could have then collaborated with the staff at the residential treatment facility to find Anne eligible for services, and develop an IEP for her before she returned to the school district. If evaluations or data are unavailable for the child, then parents and advocates may also request that the school evaluate the child for special education and related services,<sup>168</sup> and may do so even if the child is in an out-of-state facility at the time the parents request the evaluation.<sup>169</sup>

While not possible in all cases, in the authors' experience, the strongest advocacy around evaluations often occurs when the parent, advocate, or attorney is able to work with the evaluator (after the parent has requested the evaluation) to directly incorporate the child's needs as a commercially sexually exploited child within the evaluator's recommendations for educational services. A strong evaluation will not only address the hallmark symptoms of a particular mental health condition but, where the child has been unavailable for learning due to truancy or running away, can also provide a clinical context for these behaviors and establish the IDEA-required link between a child's unavailability for learning and his or her disability.<sup>170</sup>

### 2. Trace the Complex Needs of a CSEC Survivor Back to the Basic Floor of Educational Opportunity

Schools are able, under the IDEA, to provide special education and related services to address the complex needs of CSEC survivors, as long as the child needs those services to receive the basic floor of educational opportunity.<sup>171</sup> In *Board of Education of Hendrick Hudson Central School District v. Rowley*, the Supreme Court held that children with special education needs are only entitled to the services that provide them with this basic floor of educational opportunity.<sup>172</sup> Accordingly, children are entitled to the basic special education and related services that meet their needs as a unique child with a disability, and what constitutes a basic floor varies from child to child.<sup>173</sup>

<sup>166</sup> In the authors' experience, sometimes a child will be returned to the community immediately (and without the opportunity to be evaluated). However, where the child has been detained, hospitalized, or placed in a residential treatment facility prior to being released to the community, it may be best to advocate that he or she be evaluated at that facility, so that evaluation can be used to support school-based services when the child returns to the community and re-enrolls in school.

<sup>167</sup> Under the IDEA, a child's placement in residential treatment in another jurisdiction does not necessarily change the identity of his or her school district, because residency is what determines a child's school district (as opposed to where a child is physically located). See *D.C. v. Abramson*, 493 F. Supp. 2d 80, 84-86 (D.D.C. 2007).

<sup>168</sup> 34 C.F.R. § 300.301(b).

<sup>169</sup> *Abramson*, 493 F. Supp. 2d at 82, 84-86.

<sup>170</sup> *Dep't of Educ., State of Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001).

<sup>171</sup> See *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982); *Cari Rae S.*, 158 F. Supp. 2d at 1196 (interpreting *Rowley* to obligate states to not only "provide a basic floor of opportunity and confer some educational benefit, [but] also requires a program individually designed to provide [such] benefit") (internal quotation marks omitted).

<sup>172</sup> *Rowley*, 458 U.S. at 201. "[A] basic floor of opportunity [ ] would bring into compliance all school districts with the constitutional right of equal protection with respect to handicapped children." *Id.* (internal quotation marks omitted). Therefore, "the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child." *Id.*

<sup>173</sup> See 34 C.F.R. § 300.39 ("Special education means specially designed instruction...to meet the unique needs of a child with a disability[.]").

Returning to the example of Anne, the data collected by the doctors and counselors working with her while she was in residential treatment indicate that her “basic floor” of educational opportunity is a full-time special education facility where she can be in small classes and have therapeutic support throughout the day. As illustrated by her clinicians, Anne is not even able to be in a crowded hallway or cafeteria without having a panic attack. However, Anne would likely be successful in a school setting where she would be in a separate class for most of the school day, but still have the opportunity to eat lunch or otherwise interact with non-disabled children. The IDEA mandates that schools place students in these types of school placements if the student absolutely needs that level of placement to receive an educational benefit.<sup>174</sup>

Although Anne presents an example of a student who will need an entirely new school placement as a result of her disability, other CSEC survivors may be able to return to their prior school settings with additional and extensive special education supports. The additional special education support could include specialized counseling services (even bringing a provider into the school) so the student could have support from a qualified therapist in school as needed. The school could also provide the student with a dedicated aide, who could deliver therapeutic one-on-one assistance to address the student's common triggers throughout the day (including during unstructured time between classes and at lunch, and in non-academic classes). The school could also provide the student with a modified schedule (so he or she could leave class later or earlier than other students) to limit exposure to large groups of people, and specialized instruction to assist in catching up on any academic skills the student missed while being exploited. Schools should also consider whether the CSEC survivor requires a same-sex setting to receive educational benefit, especially in situations where interactions with the opposite sex are an enduring trigger of trauma, even after intensive clinical work.

Under the IDEA, students are entitled to a *free* and *appropriate* public education, so if a special education attorney demonstrates that these services are required to provide the student with a basic floor of educational opportunity, those services must be provided to the student by the school. If such services are not initially provided, the special education attorney and parent can consider taking additional steps to pursue services through a due process complaint. Additionally, if a school is reluctant to provide children with necessary services, children and families in these situations may also benefit from the retention of a special education attorney to advocate for a child's needs. At times, advocating on behalf of a CSEC survivor to receive appropriate special education services may seem to be uncharted waters as schools and communities are only beginning to learn about CSEC and its impact. Many of the challenges to appropriate service provision, however, are ones that special education attorneys and advocates have already encountered through their work on behalf of other children with mental health needs, particularly children whose mental health needs impact their attendance and availability for learning.<sup>175</sup>

<sup>174</sup> A variety of residential placements exist that will accept CSEC survivors. *See generally*, HEATHER J. CLAWSON & LISA GOLDBLATT GRACE, U.S. DEP'T OF HEALTH & HUMAN SERVS., FINDING A PATH TO RECOVERY: RESIDENTIAL FACILITIES FOR MINOR VICTIMS OF DOMESTIC SEX TRAFFICKING 3-4 (2007), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/ResFac/ib.pdf> (providing more information on treatment facilities with special expertise on this issue); *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (holding that a school district may be required to reimburse parents for placement in a full-time non-public special education placement); *Draper v. Atlanta Indep. Sch. Sys.*, 518 F.3d 1275, 1285 (11th Cir. 2008) (holding that parents can also seek prospective reimbursement, or sue a school district for placement in a non-public program when parents do not have the means to place and then seek reimbursement).

<sup>175</sup> *Cari Rae S.*, 158 F. Supp. 2d at 1195; *Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, No. CIV 05-0062 WPJ/WPL, 2007 WL 5023652, at \*2 (D.N.M. Jan. 10, 2007), *aff'd in part*, 520 F.3d 1116 (10th Cir. 2008).

To address these challenges, attorneys can advocate for a child at school meetings, and, if sought by the parent, due process hearings. Attorneys may argue that a child's struggle with regular school attendance, especially when it is a departure from a child's previous school performance, is a sign that a child is eligible for special education and related services.<sup>176</sup> Attorneys should be well versed and able to distinguish their clients' cases from *Garcia ex rel. Garcia v. Board of Education of Albuquerque Public Schools*, a case where a child was denied services as a result of attendance issues.<sup>177</sup> In *Garcia*, the student was eligible for special education and related services, yet still struggled with class attendance.<sup>178</sup> The court found that the student was not denied a FAPE because the student failed to attend school even with the provision of various interventions and services, and thus the student's truancy was unrelated to the student's disability.<sup>179</sup> In making this determination, the court made clear that attendance could be an indicator of special education and need for services, as "a student's lack of enthusiasm, at least in some cases, may be related to his or her disability. Such students are perhaps most in need of vigilant attention from their schools."<sup>180</sup> Attendance issues may not only indicate the existence of CSEC but also that of trauma or anxiety the student experiences in his or her school environment as a result of a CSEC experience and accompanying mental health needs. When attorneys are advocating for these children, attorneys should emphasize that interventions should be tried first, *before* concluding that the student is not attending, is not available for learning, and therefore will not benefit from interventions.

In summary, CSEC survivors who develop disabilities as a result of their CSEC experience are entitled to receive any special education or related service necessary to provide them with the basic floor of educational opportunity, even when the "floor" of a CSEC survivor may look substantially different from those a school is accustomed to creating.<sup>181</sup> Parents and educational decision makers, working together with special education attorneys, can advocate for CSEC survivors by making sure schools are educated on CSEC and by using evaluations and data regarding a child's experience to build a case for having the child's needs met pursuant to existing strategies under the IDEA.

## V. RECOMMENDATIONS AND SUMMARY

This Article offers advocacy strategies and resources for individual attorneys, specifically GALs and special education attorneys, illustrating what CSEC cases look like, and how zealous, client-centered advocacy can be used to create a safety net for a child on a case-by-case basis. There are several tools available to attorneys: educated and informed client interviewing skills, thoughtful case planning, advocacy in criminal court and other court forums, special education advocacy to secure school-based services as needed, as well as strategies on how to work with and build a team for a child that recognizes the child's experiences and needs as a result of these experiences.

Given the many obstacles to identifying CSEC and implementing appropriate interventions, however, systemic change is crucial. All systems working with exploited children (including schools, courts and social service agencies) must stand ready to assist these children

<sup>176</sup> *Cari Rae S.*, 158 F. Supp. 2d at 1195.

<sup>177</sup> *Garcia*, 2007 WL 5023652, at \*2.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at \*12.

<sup>180</sup> *Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116, 1127 (10th Cir. 2008).

<sup>181</sup> *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 201 (1982); *supra* Part IV(B)(2).

when they return to their communities, and be held accountable for this responsibility. This Article will conclude with some brief recommendations and a review of systemic reform initiatives that could begin to address the needs of these children.

A. *Ensure CSEC-Specific Training for Attorneys Who May Encounter CSEC in Their Caseloads*

Local trainings and conferences regarding commercial sexual exploitation may be beneficial to individuals working with CSEC youth. The majority of current training modules and conferences regarding commercial sexual exploitation are not specifically targeted at attorneys, and focus more broadly on clinical needs, treatment options, and survivor stories.<sup>182</sup> Local bar organizations and non-profits working directly with commercially sexually exploited youth should offer “CSEC 101” trainings to help ensure attorneys are provided with current information about CSEC in their geographic area, and to identify what legal tools are available to address CSEC. In this way, CSEC-specific information could become part of the generally accepted canon of knowledge for child advocates, rather than an area of special expertise for which attorneys must seek out discrete training opportunities.

B. *Local Jurisdictions Should Implement and Enforce an Agency Collaboration Protocol*

The State of Washington has implemented perhaps the most thorough interagency response protocol to address CSEC at the state and local level.<sup>183</sup> Washington’s multi-pronged model, “Project Respect,” lays out guidelines for case screening, interagency collaboration (between police, child protective services, attorneys, etc.), and training for any professional that is likely to come into contact with a CSEC-vulnerable or CSEC-involved youth.<sup>184</sup> It also includes a plan for data collection.<sup>185</sup> The current lack of reliable CSEC data on the local, state or national level is one of the greatest systemic barriers to implementing best practices since, absent an accurate statistical picture of the problem, stakeholders and funders are hesitant to commit to specific programs or policies. Jurisdictions should look to “Project Respect” as a model of best practices that can be adapted to other localities.

C. *Expand Training Initiatives in Schools and Develop and Expand CSEC Training Guidelines for Educators and CSEC Awareness for Students*

The current guidance from the U.S. Department of Education is invaluable in ensuring that educators are apprised of their general obligations to screen for youth who are being commercially sexually exploited. It is unclear, however, how this information is being disseminated to classroom teachers, special education coordinators, in-school clinicians, and other school staff who have direct contact with students who may be vulnerable to CSEC. There is a wealth of existing training materials that could be incorporated into annual trainings and new teacher and staff trainings. Training materials could include the materials developed by Shared Hope International,<sup>186</sup> those developed by the Blue Campaign,<sup>187</sup> and materials that may be made

<sup>182</sup> See, for example, GEMS’ Victim, Survivor, Leader (VSL) curriculum and other technical assistance programs. *Training and Technical Assistance*, GEMS, <http://www.gems-girls.org/get-trained/training-and-technical-assistance> (last visited Apr. 5, 2014).

<sup>183</sup> WASHINGTON STATE MODEL PROTOCOL, *supra* note 81, at 4-6. Although recommended practices may vary in implementation, the protocol’s core principals can be translated across jurisdictions. *See id.* These include: “[v]iewing CSEC as victims, not criminals, and avoiding arrest and detention whenever possible; [p]roviding CSEC with ‘victim-centered’ services; [m]aking CSEC safety a key concern; [t]reating CSEC with respect and taking into account their cultural and linguistic needs; [f]ocusing on local, regional and statewide collaboration and coordination; and [r]elying on data and research, as well as experience, to improve system response and better outcomes for CSEC.” *Id.* at 4-5.

<sup>184</sup> *Id.* at 25, 28, 35.

<sup>185</sup> *Id.* at 30-31, 71-72.

<sup>186</sup> *See Human Trafficking Training*, *supra* note 79 (providing several prevention training modules for social service organizations, law enforcement agencies and the juvenile justice system).

available by other non-profits that address human trafficking prevention.<sup>188</sup> Given the abundance of materials and fact sheets on this issue, clear guidelines should be set for what teachers are expected to know about commercial sexual exploitation, how often they should be trained regarding CSEC, and when those training materials will be reviewed and updated.

Additionally, schools should consider developing information campaigns to address CSEC. Similar campaigns have been utilized in schools to advertise and address services for children who may be homeless. For example, the District of Columbia public school system employs a liaison for homeless youth at its central office, and each school has a designated coordinator within the building to address concerns regarding student homelessness.<sup>189</sup> Many schools also have bulleted "Know Your Rights"<sup>190</sup> posters with the contact information of the liaison. Implementing a parallel system targeting CSEC youth would provide a framework to address the needs of these students and also provide a mechanism for data collection. Moreover, such a campaign would not appear to be a financially burdensome recommendation to implement, given the existing mandate from the U.S. Department of Education on CSEC generally.

Schools should also consider adopting developmentally appropriate training for students on commercial sexual exploitation, so they can also be knowledgeable about the risk, and be empowered to come forward on behalf of themselves or a friend they suspect is in trouble. Several organizations have already developed curriculum to be used with students, and many also provide trainings or other activities aimed at working with students.<sup>191</sup>

*D. Schools Should Inventory and Expand Resources to Provide Appropriate and Creative School-Based Services to Commercially Sexually Exploited Youth*

In addition to improving training standards and awareness, school districts can help address the impact of commercial sexual exploitation by reviewing their own capacity to address the potential specialized needs of commercially sexually exploited children, including their possible need for a small class size, therapeutic services throughout the day, and single-sex environments. Schools can work to build relationships with community organizations that provide these services, determine what resources are available in their district, and identify funding options for resources that may be needed, but are not currently available.

While anticipated cost may be a concern in building this network of resources, the school system should first inventory the available free or low-cost local supports, and advocate for funding for services that are not available within the district. There are many organizations working on aspects of the issue of commercial sexual exploitation, which may or may not be

<sup>187</sup> *Human Trafficking Awareness Training*, DEP'T HOMELAND SEC., <http://www.dhs.gov/blue-campaign/awareness-training> (last visited Feb. 23, 2014) (providing double sided pamphlet tailored for educators so they can better recognize the signs of human trafficking in schools).

<sup>188</sup> See, e.g., *Project Prepare*, FAIR GIRLS, <http://fairgirls.org/about-us/about-us/programs/prevention-education> (last visited Feb. 24, 2014) (outlining prevention curriculum for youth with risk factors for commercial sexual exploitation).

<sup>189</sup> *Homeless Children and Youth Program*, D.C. PUB. SCHS., <http://dcps.dc.gov/DCPS/In+the+Classroom/How+Students+Are+Supported/Homeless+Children+and+Youth+Program> (last visited Feb. 27, 2014).

<sup>190</sup> For example, the American Civil Liberties Union (ACLU) created a *Know Your Rights* booklet providing "effective and useful guidance" addressing "what rights you have when you are stopped, questioned, arrested, or searched by federal, state or local law enforcement officers." *Know Your Rights When Encountering Law Enforcement*, AM. C.L. UNION, <https://www.aclu.org/national-security/know-your-rights-when-encountering-law-enforcement> (last visited Apr. 4, 2014). The ACLU further developed a school specific guide for public schools in Washington, D.C. See AM. CIVIL LIBERTIES UNION, *KNOW YOUR RIGHTS: A GUIDE FOR PUBLIC SCHOOL STUDENTS IN WASHINGTON* (2007), available at [https://aclu-wa.org/library\\_files/Guide%20for%20Public%20School%20Students.pdf](https://aclu-wa.org/library_files/Guide%20for%20Public%20School%20Students.pdf).

<sup>191</sup> See, e.g., WALKER, *supra* note 26, at 34 ("[S]takeholders in Sacramento have recognized the importance of youth involvement in CSE programs. Recently, a group of students, including survivors and their allies, developed a youth-led initiative called 'Students Together Reducing Exploitation and Trafficking' (STREAT). The survivors and allies have led awareness activities, developed after school clubs, and are currently ramping up efforts to provide trainings.").

coordinating or communicating with each other. By example, a school district could utilize the training materials made available by the Blue Campaign for school staff, adopt the student curriculum developed by a non-profit, and ask the non-profit for help coordinating a regular after school activity for at-risk students. For individual therapeutic services for students, the school district could determine whether or not there are providers or local graduate schools training therapists and psychologists to address this issue, and see if a partnership with those groups is affordable. By coordinating the resources that may be available to a school district before turning to resources that may require substantive additional funding, schools may be better able to prevent exploitation or provide earlier interventions to children who need services.

Finally, schools should also be mindful in developing resources, understanding that providing resources based on a child's level of need can often be more cost-effective than disputing the student's level of need. As noted above, immediate and dramatic interventions are often critical in preventing recidivism among commercially sexually exploited children. Schools can avoid potentially costly litigation by providing the services at the outset, since the school district is often required to pay for litigation costs and compensatory services when a parent prevails.

## VI. CONCLUSION

This Article is intended to begin a conversation within the legal services community about how child advocates can best serve youth who have experienced commercial sexual exploitation.<sup>192</sup> The best advocacy may start at home, through coordination of resources, information sharing, and continuous dialogue between professionals about what they are seeing, and what is and is not working in their practices. Commercial sexual exploitation of children is a crime that thrives on silence. The more attorneys and advocates can do to encourage open dialogue about prevention and intervention, the greater the hope to achieve better outcomes for survivors.

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<sup>192</sup> To the extent that direct services occur at the local level, the authors recommend that anyone interested in learning more about commercially sexually exploited children, or who is encountering this issue in his or her work, should research what resources are available within his or her community and connect with other advocates encountering CSEC in their case loads.