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The Basics of Getting Started - Who, What, When, Where, and How?

Leigh S. Goodmark

University of Maryland Francis King Carey School of Law, lgoodmark@law.umaryland.edu

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THE BASICS OF GETTING STARTED — WHO, WHAT, WHEN, WHERE AND HOW?

Before you open the doors of your school-based legal clinic, you need to answer some fundamental questions about how your clinic will operate. This section poses those questions and suggests a range of answers based on the experiences of lawyers who have established and/or are currently working in school-based clinics. Consider it a guide to assist you in getting your own clinic started. For further clarification on specific topics, refer to subsequent sections of the book where they are addressed in more detail.

WHO WILL YOU SERVE?

The majority of the existing school-based legal clinics are found either in high schools or elementary schools. In the high school setting, in most instances, the student is your client. In the elementary school, the parents of the students are your clients.¹ Very few, if any, clinics serve middle schools because of the difficulty of determining *who* the client will be. Middle school students are on the cusp; old enough to have legal needs independent of their parent, but young enough to have difficulty articulating those needs.

WHO CAN YOU TEAM WITH?

Overcoming the school's reluctance to have "outsiders" in the school building can enhance your efforts to start a school-based legal clinic. You can deal with this challenge by attaching yourself to other services already existing within the school. As an example, schools that have Healthy Start programs or health centers are natural sites for school-based legal clinics for a number of reasons:

- They are already accustomed to the presence of other service providers who are working in the school;

¹ There are exceptions to this. For instance, in special education cases where the legal rights belong to the parents, not the child, the parent is your client. Also, even though the child will ultimately gain from legal intervention in benefits cases, the legal entitlement belongs to the parent.

- Space can be shared;
- The legal services clinic can benefit from using materials produced by the other entity (including consent forms giving students parental permission to access services); and
- Students and parents already regard the school as a place for getting more than an education.

Alternative schools are usually receptive to hosting school-based legal clinics. This can be due to the fact that many alternative schools already offer "street law" programs and therefore regard on-site legal services as a logical extension of existing curriculum.

In the traditional public school setting, there are a number of stakeholders whose approval may be crucial to the success of your school-based clinic. Some clinic founders have experienced success by initially seeking partnerships with the school's principal. Other clinics have gone to a level above the principal, seeking the superintendent's assistance in identifying schools that are good candidates for legal clinics. One advantage to establishing that relationship is that the superintendent's office can provide useful inside information about the school's dynamics, which will affect the operation of your clinic.

Teachers are important allies in ensuring that your school-based clinic will have access to clients, both students and parents. While developing a relationship with all teachers is important, some teachers can be especially helpful in directing clients to your clinic and/or identifying a student's or a family's legal needs. Clinics have found that special education and English as a Second Language teachers often have a more intimate knowledge of the students and families they serve and are especially valuable as a source of referrals and information.

Social workers and other clinical support personnel can offer valuable assistance. These school staff members often see children in crisis and can make an immediate and timely referral.

If the school has an active parent group, that group can be a valuable ally in establishing and maintaining your school-based legal clinic. Similarly, a student government organization could rally behind the idea of establishing a clinic for students.

Lawyers in school-based clinics can engage these groups by working to build trust within the community – attending PTA meetings and school field days, patronizing local establishments, reaching out to grandparents and other long-time community residents. Clinic lawyers must be sensitive to and honest about any differences of class, race and ethnicity, and pay attention to cultural issues in the community, in order to gain the community's trust.

Regardless of who your clinic approaches for support, creating a shared sense of mission is key to making those partnerships work. To ensure that, you will need to impress upon the minds of all the members of the school community an understanding that the school-based legal clinic is a tool to help address the problems that can hinder a student's ability to learn.

WHO WILL STAFF YOUR CLINIC?

School-based clinics can be staffed in a variety of ways, each of which has positive and negative points associated with them. Establishing a consistent staffing structure that is conducive to the resources and needs involved in your particular environment is imperative to your clinic's success.

Some clinics employ a lawyer full-time to represent their clients. Often these lawyers are funded by public interest fellowships, like those offered by the Skadden Arps Fellowship Foundation or the National Association of Public Interest Law. The benefit of using this model is the complete commitment of a full-time lawyer to the success of the project and the ready availability of that lawyer when a member of the client community discloses a legal need. However, because fellowship funding is finite, relying solely on Fellows can compromise the long-term viability of your school-based clinic.

Other school-based legal clinics rely on *pro bono* attorneys to provide their services. (For further information, see the discussion on "What Level of Representation Will You Offer?") *Pro bono* attorneys can be very enthusiastic and committed to helping clinic clients with their legal problems. That enthusiasm often wanes, however, when client populations are slow to materialize, when clients are late for appointments, or when they fail to comply with the lawyer's request to provide documents or return phone calls. Moreover, some school-based clinic practitioners question the propriety of allowing *pro bono* lawyers, many of whom are new lawyers seeking litigation experience, to develop their practice skills on children and families.

Another popular model uses law students who are involved in a clinical program through their school to represent the school-based clinic's clients. Similar to *pro bono* attorneys, law students are generally devoted and enthusiastic, and because a clinical professor with expertise in the subject area supervises their work, concerns about learning practice skills at the expense of the client are diminished. Nonetheless, problems can arise when you use law students to staff your clinic. First, continuity of representation can be an issue; law students generally participate in clinics for one semester, or at most a year, but the clients' cases

can endure. Moreover, during school breaks and exam periods, securing a law student who is willing to work in your clinic can be difficult. Law students must be concerned about avoiding the unauthorized practice of law. Accordingly, they are limited in what they can offer to clients without running afoul of the rules governing practice by law students.

WHAT LEVEL OF REPRESENTATION WILL YOU OFFER?

School-based clinics offer a range of representation options, from providing legal education, to advice and referral, to handling client cases. There are benefits to each type of arrangement. Providing community education can illuminate legal issues about which clinic clients might not otherwise be aware. Clinics can reach a greater number of people in a shorter period of time using this community education method. It is important to couple the educational component with referrals to organizations that can provide appropriate legal services. Otherwise, raising issues without providing related resources is useless to someone who needs assistance.

Some clinics focus their efforts on individual counseling and referrals. This approach allows the clinic to get a close sense of each client and their legal issues. The one-on-one dynamic creates the ability to better serve an individual who needs help thinking through specific approaches that might best resolve her particular problem, yet the 'advice and referral' design also allows the clinic to serve a larger number of clients without the financial and time pressures involved in taking on the client's actual case, whether that involves making a few phone calls, engaging in informal negotiations, or fully litigating the client's claims. Some clinics that operate in the advice and referral model also provide clients with materials explaining their legal rights, giving clients something tangible to take with them and use to formulate further questions.

Clinics can also provide *limited* representation; for example, one school-based clinic assists students with filing citizen complaint letters against the police to protest police harassment. There are also clinics that do engage in the *full* representation of individuals in a variety of subject matters. This avoids the need to refer a child or youth to yet another resource. (Determining what kind of cases your clinic will take is discussed next and in the following section of the book.)

WHAT TYPES OF CASES WILL YOU HANDLE?

In deciding what types of cases to handle, your school-based clinic should consider the needs of the community, the availability of other legal resources, and the expertise of the attorneys involved. School-based clinics have handled a wide variety of cases, including child custody,

child support, domestic violence, immigration, pregnancy discrimination, public benefits, housing, guardianships, child abuse and neglect, access to mental health care, employment, and emancipation.

Attorneys working in a school setting must also determine whether they will handle cases involving the school itself. Most frequently, these are discipline and special education cases. Some clinics handle these cases internally. Other clinics agree from the outset not to handle cases that would involve the school as a defendant. The decision to take a discipline or special education case is largely dependent upon the willingness of the school to house a legal services program that could potentially sue the school. If you choose to take such cases, the ability to handle them without alienating essential supporters in the school is crucial. Those clinics that decline to handle such cases usually inform the client of their rights and either take those cases on an extremely selective basis or refer them to other attorneys who will represent them in that type of dispute.

WHEN WILL YOU MEET WITH CLIENTS?

Finding the time to meet with your clients can be challenging, given the schools' limited hours of operation and both the parents' and students' individual schedules. Like some school-based clinics, you may want to operate on a set schedule, thereby guaranteeing that a lawyer will be present weekly at the same hours. Certain clinics either schedule appointments for a particular time or allow drop-ins so a client is able to see the attorney at any time. One drawback to using the drop-in method is the uncertainty involved; long periods of time can pass without a client stopping in. Another option for you to consider is to see clients by appointment only. If you are in a school where students have no "free periods," early morning, lunchtime, or after-school meetings might be the only option. If you are in a school that does have "free periods", scheduling is easier and better protects confidentiality if you obtain schedules for all of your student clients early in the relationship and use it to make appointments for your clients during their "free periods." If you use that method, the clinic sends the student a pass to leave class in an envelope, which maintains the confidentiality of the contact. Moreover, your clinic should adapt to the schedule of the school day. For example, in one clinic, staff arrives at 7:15 a.m. in order to meet students before school begins at 7:30 a.m.

WHERE WILL YOU MEET WITH YOUR CLIENTS?

Space is always at a premium in overcrowded schools. Still, it is crucial that attorneys have a space in which they can meet with clients in a confidential setting. Accordingly, it is a consideration that you should

research early on as you contemplate starting your clinic. The school staff must understand from the inception of the relationship that, without a space for confidential meetings, the clinic cannot function. It might be possible to share your legal clinic space with another program that is already in existence, such as a school health center. Other options include unused classrooms, offices, or random rooms that are not in use during your office hours (such as the school nurse's office).

HOW WILL YOU EXPLAIN YOUR ROLE?

There are a number of issues that must be discussed with school staff before your school-based clinic can begin seeing clients. First, school staff must clearly understand what the clinic will and will not do. Conduct conversations with the appropriate staff about the types of cases the clinic will handle and the ones that will be referred out. Explain the limited nature of a legal advice and referral or education program. It is also imperative that you explain the clinic's stance on handling matters for teachers or providing legal advice to the school.

Mandatory reporting of child abuse and neglect is a major point of contention for school-based clinics. Clinic administrators must ensure that schools understand that attorney/client privilege prevents the clinic from reporting abuse or neglect in all but a very narrow set of circumstances. This conversation can lead to a larger discussion about the nature of the attorney/client privilege. Give staff a thorough explanation of confidentiality and be prepared to remind them from time to time about the nature of the attorney/client privilege.

School-based clinics have developed ways of sharing information without violating the attorney/client privilege. As is practice in some clinics, you can ask clients to sign limited purpose waivers of the privilege, which allows the lawyer to discuss specific client problems with others in the school community. This is especially helpful when developing interdisciplinary partnerships, as the information known to the clinic can play a key role in helping to develop a case plan for the client.

As in any other legal services program, your clinic must check for conflicts and ensure that you are not violating the ethical rules on conflict of interest in providing advice or taking on multiple representations. Clarify how your clinic will handle conflicts of interest. Moreover, your clinic must make sure that the school staff understands these requirements. Some examples of such conflicts include:

- when two parents within the school community bring actions against each other (i.e., for child custody, support, divorce, or domestic violence);

- when two students in the school community have grievances against each other; and
- when a student seeks support for an action against the school system or an individual teacher.

HOW WILL YOU FUND YOUR CLINIC?

Funding is the perennial problem for all legal services programs. As previously noted, many of these clinics are funded through fellowships; others through grants from foundations or governmental entities. As with any program operating on "soft money," as the clinic's founder, you should have a plan for sustaining funding of the clinic or face the very real possibility that your clinic will disappear when the grant runs out.

Some clinics are slightly more stable because they tie themselves to law schools, although many law school clinical programs also experience the stress associated with "soft money" funding. Seeking a long-term commitment from the sponsoring school can alleviate your concerns about lost grant funding.

HOW WILL YOU MEASURE THE EFFECTIVENESS OF YOUR WORK?

The book's section entitled "User-Friendly Evaluation" stresses that evaluation is the *key* to ensuring that your program is achieving the desired results and therefore safeguarding its longevity. Evaluation allows you to determine if what you are doing is working, it enables you to make changes along the way, and it gives you the information you will need to show your funders that your school-based clinic model is an effective strategy for delivering legal services to parents and/or students. When your evaluation demonstrates positive results, you can use those to sell your program to others. No matter how small your clinic is, evaluate its success from the very beginning – as you develop your project, you should also develop your evaluation strategy.

Evaluation is easier when the project has specific, measurable goals from its inception. Some clinics are designed to address a specific problem (therefore creating a measurable variable). For example, lowering high school dropout rates might be your goal. Evaluating your clinic's success at addressing that, by comparing rates before the clinic's inception to those after a period of time in operation, can demonstrate the value of your clinic to funders, to the school, and to the community. However, as the evaluation chapter insists, even if your clinic isn't designed to address one specific issue, and whether or not your goals are general or specific...be sure to evaluate them.