

BRIAN LEWINSTEIN
YOUTH JUSTICE
FELLOWSHIP

POST GRADUATE
ANNUAL REPORT

EQUAL JUSTICE
A M E R I C A



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BERKELEY, CA
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EAST BAY COMMUNITY
LAW CENTER



I. REFLECTIONS



Kaya McRuer, J.D. 2023
Berkeley Law

Over the past year, my first year of practice as an attorney, I have learned two particularly important lessons: (1) approaches to the practice of law that I hope to maintain through my career and (2) how to do the type of work I want to do sustainably. While I still have more to learn in each of these areas, I could not be more grateful for the experiences I have had during this fellowship so far and especially for the team in the Education Defense & Justice for Youth (EDJY) clinics at the East Bay Community Law Center (EBCLC) who have supported my growth and wellbeing every step of the way.

My colleagues in EDJY practice community lawyering in a way I hope to find in future workplaces. Specifically, we practice client-centered direct services that inform our community-centered policy and public outreach work. For our direct service work, this involves building trust and respecting the expertise of our clients in their own lives. It also involves doing some things beyond what lawyers would typically do in terms of case management. Through doing this work, I have learned the value of having someone working to coordinate and connect providers with young people, particularly for the sake of completing probation or post-expulsion requirements. Often in my work, this role has fallen to me or to a law student I am supervising. Doing this work for our clients is especially important for the young people I work with, who are already struggling even without added expectations from courts or schools.

Similarly, in EDJY's policy and public outreach work, we aim to build trust by respecting the expertise of our community partners. Demonstrating this involves soliciting their feedback and listening to their stated needs to inform the support and services we offer to those partners. I have leaned on this practice in creating



workshops and self-help materials for our community partners and it has helped to deepen relationships with local community-based organizations who in turn support the client population we serve. In addition, by listening to the stated needs of EDJY clients and those who call our intake line, I am working to ensure that the self-help materials we create are tailored to the needs of the community we serve.

In terms of sustainability of practicing in my area of law, a key lesson for me has been gaining an understanding of my limits and boundaries as they relate to my role as a lawyer. I discuss this in more detail below under the challenges section. I have also worked on learning how to engage in healthy coping mechanisms such as taking time to process difficult moments in the work—including the secondary trauma of learning about tragedies experienced by my clients and their families. I am lucky to work in a team that models this and encourages me to care for myself in a way that allows me to be a better lawyer and more present in my work without burning myself out. My team also models a form of vulnerability with one another that I hope to continue with my colleagues as I practice law going forward. This includes both asking questions of one another, but also always thinking to ask the coalitions of lawyers and advocates engaged in similar work across the state who have a cumulative wealth of experience and knowledge. In addition, it involves talking through challenges, not only with technical legal work, but also with the emotional toll that working with youth can take. My colleagues have modeled no shame or judgment around emotional responses to the work. I have also appreciated through conversations with them and with my students that an emotional recognition of the wrongness of many of the systems we confront is necessary to make us better advocates.



II. INITIATIVES

It is challenging to summarize the focus on my work so far with EDJY because it has taken so many forms, but a common throughline that I am passionate about is that of participatory defense. I recently was a panelist during a retreat panel for the statewide Fix School Discipline coalition focused on participatory defense. From my co-panelists I learned that the term participatory defense can have many definitions and involve many forms of work by lawyers (often in partnership with community organizations or organizers). The definition that I think applies best to the work I have done thus far in my fellowship is empowering impacted communities and their members to be involved and ultimately to lead in advocating on their own behalf.

The first way in which I apply this focus in my work in EDJY is through the model my team uses in our direct-service work with young people: stated

“I HOPE TO MAINTAIN THIS MODEL OF ADVOCACY CENTERED ON MUTUAL RESPECT AND TRUST WITH ANY CLIENT POPULATIONS I WORK WITH THROUGHOUT MY CAREER.”

interest, client-centered defense. This model involves a presumption that young people are the best experts in their own lives and that we, as their lawyers, should be led in our advocacy by the goals that our clients have for themselves. While this is not always an easy model to follow—especially in school-related work where parents or guardians generally have decision-making power—it is one that has taught me a lot about building trust with my clients and their families. The beauty of that trust is that because I trust my clients to make decisions for themselves, whereas, because of their age few others do, they will often trust my advice as their attorney. I hope to maintain this model of advocacy centered on mutual respect and trust with any client populations I work with throughout my career.



Another way I have engaged with participatory defense is by taking lead on my team on training community partners and creating community-focused self-help materials. Over the course of my first year with EDJY I have created or supported the creation of three trainings. Two were for community-based organizations (CBOs) who work with young people. They requested trainings on the juvenile delinquency court system and on how non-lawyers could engage in expulsion defense respectively. The third training was requested, through a partner in a local coalition I attend, by youth participants on the rights of young people in police interactions. Over the next year, I hope to continue to provide training to community partners upon request.

In addition, and often in concert with the trainings, I have led the creation of several self-help materials through a self-help material working group in EDJY. The workgroup has created flyers that have been requested by community partners or fill an identified community need based on calls EDJY receives through our intake line. Over the next semester, we plan to create several more flyers and tools with the help of law student interns. The material I am perhaps the proudest of and excited about the possibilities for is a toolkit designed for non-lawyers to use in expulsion advocacy. It was created to go with the training on non-lawyer expulsion defense. I strongly believe that non-lawyers can be as, and often more effective, than lawyers in advocating for students during an expulsion process. I recently began the process of designing a self-help materials webpage where all these materials will be available to the community soon. It is my hope that the toolkit and the future trainings we will offer to community partners about its content will empower students, their families, and their providers to understand and advocate for themselves in school discipline proceedings.

A third way in which I have engaged in participatory defense work is through a workgroup of the statewide Fix School Discipline coalition, focused on implementation of a new law limiting suspensions for “willful defiance.” The focus of the workgroup, thanks to feedback and advice of our organizer members, has been to create tools



and trainings which empower community members to push for implementation of the law. I have helped to create a tool which community members can use to document and raise awareness at a school district level about illegal suspensions. In the coming year, I will continue to work with this workgroup to both monitor (through community reporting tools we created) and support communities with enforcing the law for their own students.

The final way in which I have engaged with participatory defense is through my work as a clinical supervisor. So far, I have supervised two law students and am currently supervising a third. Through supervision conversations and engaging my students with the work I am doing, I aim to help my students learn to approach legal work from a client and community- centered perspective. I hope that by working with me on several of the types of work I mentioned above, they have learned a variety of ways in which they can engage with participatory defense when they enter their own careers as attorneys.

III. CLIENTS SERVED

Over my first year with EDJY, I have done two expulsion cases (and am currently beginning my third), two ongoing special education cases, two ongoing delinquency cases, and five juvenile record sealing cases.

Both expulsion cases involved preparing for and advocating for my clients at expulsion hearings—as well as supervising law students to assist in advocacy at each hearing. Each also involved some attempts to negotiate settlement agreements and support of the clients following the hearings to achieve their goals for full re-admission to their districts.

Both my delinquency cases and special education cases involve ongoing advocacy to achieve my clients' goals. On the delinquency side this has typically involved



coordination with providers and in-court advocacy about their progress following probation mandates. On occasion, additional in-court advocacy has been required to help my clients get out, or remain out, of custody or off GPS to the maximum extent that the court will allow. My special education cases involve advocacy at IEP meetings for special education eligibility, support, services, and placements my clients identify as being helpful or preferable.

My two completed record-sealing cases have involved filing forms, and in one case filing a motion and attending a hearing, on behalf of my clients with the juvenile court. I am currently working on three ongoing cases, at least one of which will likely involve a more complex motion and hearing to seal my client's records.

IV. SUCCESSES

In each expulsion case I have worked on this year, my clients received partial wins in the form of suspended expulsions, which allowed them to remain in their home districts. While not a complete success, since they were required to follow a “rehabilitation plan”—a set of requirements to remain un-expelled and to be fully re-admitted—these were still better than a full expulsion and allowed each client to transfer to a program or school they preferred in their home district. In one case I leveraged an appeal of an expulsion to get my client a settlement agreement with rehabilitation plan terms that would be easier for the client to achieve. In another case, I prepared a federal civil rights complaint and negotiated re-admission of my client on the basis that the reason the rehabilitation plan had not been fully completed was due to my client's disability.

In two of my record sealing cases, I have helped my clients obtain relief by removing their juvenile records from their RAP sheets. Both clients noted that having their records sealed will make it easier for them to apply for jobs and in one case, apply for education programs. My three other record sealing cases are ongoing and I hope to



achieve similar outcomes for those clients.

For one of my delinquency clients, I successfully advocated for them in court after a probation violation to ensure they were not remanded to detention and were ultimately taken off GPS. I helped another client get access to the juvenile court's equivalent of mental health court which will help to ensure that the impact of my client's disabilities is considered as they progress through the delinquency system.

My final success has been starting to build up EDJY's relationship with certain community partners through providing trainings and the creation of self-help materials. I am very proud of the work I have done on creating resources to empower the community and am excited for future work on this in the second year of my fellowship.

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V. CHALLENGES

The biggest challenge for me since coming to EDJY has been coming to terms with the limits of what I can do as a lawyer for my clients. Most of my clients face many additional difficulties in their lives beyond the legal issues which I am working with them on. They face serious housing insecurity, complex relationships with family members, providers who do not show up for them in the way they are meant to, and struggles with how their schools, probation officers, and others perceive them.

I feel extremely lucky to work with a team which includes many lawyers who go above and beyond the role of a typical lawyer—including one attorney who is also a



trained social worker. They have taught me ways in which I can support with “case management” beyond the typical roles of showing up to court or filing briefs. I have learned to help coordinate and facilitate provider relationships and to help advocate for my clients’ goals not only to judges but to teachers, therapists, and even family members. I have learned to remind the people involved in my clients’ lives about how their disabilities may be impacting their behaviors and how this should impact the response of school and court systems to those behaviors.

However, with the support of my team, I have also learned the limits of what I can realistically do to help my clients. There are areas where I simply do not have the expertise to help and where my best role may be to try to connect my clients with someone who is better trained, such as a therapist or a housing case manager. The other hard lesson has been to recognize that my respect for my client’s expertise in their own lives must go hand in hand with understanding that they have agency to do things which may harm them. As one of my supervisors wisely explained, I cannot control my client’s actions, I can only give them the best advice and information I have and then respond in the aftermath.

The high stakes of those actions for my clients’ lives, freedom, and education, has at times been heartbreaking for me to witness. I again count myself lucky to work with colleagues who are open about the vulnerability and second-hand trauma that inevitably comes with the work that we do. There was a brief period during this first year where I was unsure if I could sustainably manage the impacts of this work on my own mental health and wellbeing. It is through the model that my supervisors and colleagues have given me that I feel I have learned ways to manage that impact that I hope will allow me to continue this type of work for the long term. This is by no means something I am done learning and will continue to be a challenge for me, but I know that doing so will make me a better advocate and allow me to maintain a career that I am passionate about.



VI. GOALS FOR THE NEXT HALF YEAR

While it is difficult to set specific goals for my work because it is by its nature responsive to community and client needs as they arise, I do have a few goals in mind.

My first set of goals involve my ongoing work on self-help materials and community training. I am eager to get a self-help webpage with the materials that I and others on my team have created launched for use by our community. With the launch of that webpage comes two additional goals to continue to add materials with the support of our law student interns and to offer training on expulsion defense to additional community partners. I am hopeful that we can expand expulsion-defense capacity in Alameda County (where currently only two legal organizations with limited capacity take expulsion cases), to ensure that student rights are upheld in expulsion proceedings and hopefully to reduce the overall rates of school-pushout.

In my existing client work, I hope to assist at least one of my delinquency clients in receiving a successful dismissal from probation. I also hope to help another client get their first access to special education support which they have needed for years. Finally, I hope to assist my three ongoing record sealing clients with sealing their juvenile records and terminating registration requirements that are impacting their access to housing, education, and employment.

I also hope to take on some new cases, including at least one or two new expulsion cases. In one expulsion case, I anticipate doing my first Manifestation Determination Review and potentially filing a due process complaint with an aim of preventing the expulsion of a student with disabilities. I also expect to do several additional record sealing cases.

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VII. MEDIA



In December, 2023 I was sworn in as a California attorney, allowing me to appear on behalf of my clients and represent them without direct supervision from another attorney.

In April 2024, I did my first training as a lawyer on behalf of EDJY for a group of young people who work with a community partner on the rights of youth in interactions with police. My colleague Ashley Ayala Mendoza, our program coordinator, co-trained with me and is sitting to my right in the right-hand photo.





Over the course of summer 2024, I worked with Ashley Ayala Mendoza (EDJY program coordinator, second from the left), Diego Cardenas (education advocate for the Alameda County Juvenile Public Defender’s unit, third from the left), Ellen Ivens-Duran (EDJY staff attorney, fifth from the left in the upper row) to create a training and toolkit on non-lawyer expulsion defense. The attendees of the

training in August 2024 (the remaining folks pictured) included the director, several self-determination coordinators, and youth organizers from the Young Women’s Freedom Center’s Oakland Chapter. In the next six months I will be working to revise the toolkit and training based on their feedback and working to share these resources with additional Alameda County community-based organizations as well as statewide partners in the Fix School Discipline coalition.



SUPERVISOR EVALUATION

FEBRUARY 2024



Dan Ruben
Equal Justice America
Executive Director
dan@equaljusticeamerica.org

Dear Dan Ruben,

In the short time that Kaya has been working with us in the Education, Defense and Justice for Youth (EDJY) Program, she has become an invaluable member of our team. I truly have a hard time remembering how things were before she came on board and I am already dreading her inevitable departure at the end of this fellowship! From the moment she arrived Kaya “hit the ground running” and has not slowed down since. This is, in part, due to the nature of the work that we do. It is a sad truth that the need for legal advocacy in the juvenile legal areas that we focus on is never-ending. But it also has to do with who Kaya is, as a lawyer and as a person. Kaya is a fierce advocate for her clients, whip smart, and a compassionate and caring friend and colleague. On a daily basis, her work ethic and commitment to her clients shine through.

Kaya has worked on a variety of cases and advocacy projects so far:

Kaya’s first assignment was to represent a client in an expulsion matter from an Alameda County high school. Kaya worked diligently on this case, communicating regularly with her client and his family, collaborating with his education advocate from the public defender’s office, gathering evidence in his defense, and ultimately, when we were not able to settle the matter in the client’s favor, putting on the expulsion hearing. Kaya did a great job at the hearing; not only was she well prepared for all that could be anticipated (witness testimony, cross examination, closing argument etc.) but she was also able to pivot in the moment when something didn’t go as planned. Kaya was poised, professional, and the most well-prepared person in the room. I’m sure she was nervous but you never would have known it watching her in action. Kaya also got some practice supervising a law student who did the opening statement and direct examination of a witness. Kaya’s representation of this client resulted in a positive outcome. Her client was not expelled and is now enrolled in another school in the district. Very recently Kaya handled another expulsion matter that also went to hearing. Not surprisingly, Kaya did another great job and also supervised a different law student on this case. Kaya received another favorable result for her client who was not expelled from the district.

Kaya is also getting experience representing youth in juvenile court. Kaya has two juvenile court cases for clients who are currently on probation in Alameda County. In one case, Kaya is serving as the lead on the juvenile court case and has made her first court appearance in that matter. It was a complicated scenario for a first time court appearance in that the client had violated a curfew order and was not going to school or staying at home regularly; so he was not only facing a probation violation but also the possibility of being remanded into juvenile hall based on an arrest warrant. Kaya was calm, poised, and very professional and managed to convince the judge to allow her client to remain out of custody and get another shot at returning home on ankle monitor. This was a huge win – Kaya and her client were both very relieved! In her other juvenile court case, Kaya is serving as co-counsel as the education



attorney. In this matter, Kaya has already attended more than one meeting related to the client's IEP (Individualized Education Plan) and has advocated for the client in court.

Kaya has made a great effort to get to know her clients and gain their trust by showing them she is there for them through her actions not just her words. For example, Kaya has met both of her clients several times in the community to prepare for court and school meetings and to just check in and see how they are doing. Kaya's willingness to literally meet her clients "where they are at" has gone a long way in building trust and rapport.

Kaya is also working on a variety of juvenile record sealing matters. One of these clients is an adult, who was recently released from prison after serving about ten years resulting from a juvenile court case that was transferred to adult court. The case presents some novel and very complicated questions regarding the interplay of adult criminal records and juvenile court record sealing laws. This case has been a great opportunity for Kaya to use both the client relationship building skills that are core to direct legal services work and also the legal research and writing skills that are at the core of any law school education. We don't know how this case will play out but I am confident that Kaya will push the envelope – and if there is a way to make a winning argument in this unique area of law, Kaya will find it.

In addition to her client facing work, Kaya is attending bi-weekly meetings with the Free Our Kids Coalition (FOK) one of the community partners with whom EDJY has been working for the past several years. Kaya will be a great fit for this partnership because she enjoys collaborating, learning from others, and understands the flexible nature of her role as a "lawyer" in this community led space.

The other very large part of Kaya's work with EDJY is within our clinical program with Berkeley Law School. Kaya spent the Fall semester getting up to speed and now that we've started the Spring semester, Kaya is supervising her first law student. This will entail supervising her student on a variety of legal projects, including juvenile court and record sealing matters, expulsions, community coalition work, and any number of legal research/writing/advocacy projects. Kaya is doing a great job with supervision although it may feel like a big area of growth for her since she's a new lawyer herself and has never done this before. In addition to her clinical responsibilities as a supervisor, Kaya has volunteered to co-lead our weekly seminars this semester.

As I write this report it's really hitting me how much Kaya has done in the handful of months I've been working with her. And this does not even include all the myriad other ways in which she's contributing to our team – I don't think I could even fit them all into these two pages!

And speaking of our team, I can't say enough about what a great "teammate" Kaya is. It was definitely helpful that she came into the role with some experience of what we do and who we are because of her previous work as a legal intern. But despite that experience she is still a new lawyer and has had a lot of learning to do – and I've just been so impressed by her willingness to dive into the work, to ask questions, and to seek help and support from everyone on the team, not just me. I'm really looking forward to seeing Kaya's growth over the next couple of years and I'm happy that I get to be a part of it.

Please don't hesitate to contact me if you have any questions or need further information.



Sincerely,

Cancion SotoRosen

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SUPERVISOR EVALUATION SEPTEMBER 2024



Dear Dan Ruben,

I am happy to report that Kaya continues to be a hard-working and compassionate advocate who has become an essential member of our team. Kaya has accomplished so much in the past year and it has been a pleasure to work with her, to watch her confidence grow, and to appreciate the benefits of all her hard work on behalf of our clients, our team, and our community.

Kaya's focus areas continue to include client representation in delinquency court, school discipline defense, and special education advocacy as well as clinical support to law students. Kaya's focus areas have expanded to include community trainings, creating self-help materials, and legislative advocacy.

Kaya was the lead attorney in an expulsion hearing for one of her clients. She supervised a law student who participated in the hearing. Kaya also worked with her client on re-admission to school, drafted a federal civil rights complaint alleging discrimination by the school district and strategically used the threat of filing the complaint to negotiate her client's readmission to school. Kaya is now working to complete the special education eligibility process that was started during re-admission based on her client's needs associated with her ADHD diagnosis.

Kaya's representation of two clients in delinquency court is ongoing. Kaya is happy to report that she has seen one client make tremendous strides while on probation. She is supporting him in his efforts to work towards dismissal soon. In another case, Kaya has provided both delinquency court and education advocacy. Kaya was able to get that client into collaborative court, a special mental health court that offers wraparound services for high needs youth. Kaya also connected him to providers at two different community organizations focused on mental health and violence interruption – Youth Alive and Restorative Justice for Oakland (RJOY) - from whom he has received services. This summer, Kaya supervised her law student intern to do case management with a client. Her intern helped get the process started to secure probation funding for boxing gym lessons for him and also looked into housing, laundry, and food support options.

On the education side, Kaya successfully advocated to keep a client in school when the school's IEP team was recommending an alternative placement based on behavioral issues. Unfortunately, that client is now facing expulsion and Kaya will be representing him in that matter. Kaya has been in regular contact with her client and his family and providing critical support and guidance with every step of the process.

Kaya has also successfully represented several clients in juvenile court record sealing matters and has several more pending. These wins can be particularly heartening because our clients have often been living with the collateral consequences – such as, housing or employment eligibility – related to decades old arrests or juvenile cases, long after they have turned their lives around.



Kaya has also been very active in non-casework areas of our work. Kaya is leading our team's efforts to create self-help materials responsive to the needs of both community-based organizations and community needs in order to expand our services beyond only the cases that we can take on. Some examples of the self-help materials Kaya has created so far are: Probation violations; Stakeholders in Juvenile Court; Juvenile Court word bank; and Non-lawyer expulsion defense toolkit. Kaya is currently drafting a self-help webpage for existing and new self-help materials on the EBCLC website and is enlisting the help of our law student interns.

Kaya has also developed and led the following trainings for several of our community partners: (1) youth rights during police interactions (Urban Peace Movement); (2) understanding the juvenile court process (Fresh Lifelines for Youth); and, (3) expulsion defense by non-attorney advocates (Young Women's Freedom Center).

Kaya has also been very active in the implementation workgroup in support of an important law recently passed - SB 274 - which eliminates the ability to suspend students in TK-12 for minor misbehavior covered under the "disruption or willful defiance" category. As a part of the work group, Kaya and her intern designed a tool for filing uniform complaints to contest SB 274 and helped design a monitoring tool (google survey) for SB 274 implementation monitoring this school year. Kaya is currently working on a training on the use of the UCP tool, including for a non-lawyer audience. Kaya has also participated in panels on expulsion defense & participatory defense, regularly attends meetings with the Free Our Kids alliance and the Alameda County Juvenile Justice Delinquency Prevention Coalition, and recently drafted a section of a 9th Circuit Amicus brief for a disability rights related case.

As is evident from the above, Kaya has been busy during her time in EDJY! This summer was no exception. Kaya helped hire our cohort of summer clinical students, co-led our summer clinical program, including developing and teaching several trainings, coordinating office wide social events and shared trainings, and mentoring one of the students. Kaya is currently supervising a new law student as a part of our Fall semester cohort.

Kaya has demonstrated tremendous growth and a solid work ethic over the past year. I can't say enough about how much she has contributed to our team's work and how much I have enjoyed working with her. I look forward to another year with Kaya on our team and although I will be sad when her year is up I will also be excited to see what she does next!

Feel free to contact me at (510) 269-6689 or csotorosen@ebclc.org if you have any questions or need further information.

Best,

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