



# Challenge Activities Program Areas



## Challenge to the States

The 1992 reauthorization of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 added Part E, State Challenge Activities, to the programs funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The purpose of Part E is to provide initiatives for States participating in the Formula Grants Program to develop, adopt, and improve policies and programs in 1 or more of 10 specified Challenge areas.

## Challenge Activity F

*Establishing and operating, either directly or by contract or arrangement with a public agency or other appropriate private nonprofit organization (other than an agency or organization that is responsible for licensing or certifying out-of-home care services for youth), a State ombudsman office for children, youth, and families to investigate and resolve complaints relating to action, inaction, or decisions of providers of out-of-home care to children and youth (including secure detention and correctional facilities, residential care facilities, public agencies, and social service agencies) that may adversely affect the health, safety, welfare, or rights of resident children and youth.*

### The Need for Advocacy for Children in Out-of-Home Care

As dependent citizens, children need someone to speak for them if their voices are to be heard by those in government. For children in out-of-home care, this need is particularly acute because decisions about their lives are entangled in government actions and regulations. They may have been placed in out-of-home care when other alternatives should have been considered, or they may be living in institutions under inhumane conditions. Children placed in these situations often lack parents who can monitor their children's care or protect their inter-

ests. Moreover, children's legal representation may have ended at the time of their placement.

Recognizing the need for advocacy for children in out-of-home care, Congress amended the Juvenile Justice and Delinquency Prevention (JJDP) Act in 1992 to authorize the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide challenge grants to States that establish an ombudsman office for children, youth, and families. These offices will be funded to investigate and resolve complaints concerning children and youth placed in out-of-home care. OJJDP grants are not limited to advocacy for children and youth in detention and correctional facilities, but also cover those placed in out-of-home care, including the care provided by social service agencies.

The mandate in the Older Americans Act for State ombudsmen to represent people in long-term care facilities, such as nursing or board-and-care homes, directly parallels the JJDP Act provision for State ombudsmen for children in out-of-home care. This law requires that States ensure that such ombudsmen have access to residents and their records, that they have good-faith immunity from civil liability, and that retaliation or a complainant and interference with the ombudsmen's work be prohibited.

### What Ombudsmen Do

The word "ombudsman"—one of the few words that has entered the English language from Scandinavia—has been defined by the American Bar Association as "a government official who hears



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and investigates complaints by private citizens against government agencies.”<sup>1</sup> An ombudsman does not have authority to make decisions. Rather, he or she protects the rights of individuals against the government by investigating complaints, providing opinions, and advocating on their behalf.

In Scandinavia, where the concept originated in the 19th century, ombudsmen are highly respected individuals appointed by the Council of Ministers. Their opinions carry great weight and are often highly publicized. Their independence is zealously protected. They not only investigate complaints brought by individuals against the government, but also initiate investigations on their own. In addition to ombudsmen who serve the public, Scandinavian countries also have specialized ombudsmen who represent the rights of groups with special interests, such as children, consumers, the military, and women.

## Ombudsmen for Children Abroad

To the author’s knowledge, only one ombudsman program abroad serves children in out-of-home care, the population group targeted by State Challenge grants under the JJDP Act. One of the oldest ombudsman-like programs for children, “A Voice for the Child in Care” (VCC), is based in London, England.<sup>2</sup> With just five part-time staff members, VCC recruits, trains, and coordinates a network of volunteer representatives for children in secure care. The representatives assist children in filing, investigating, and resolving the children’s complaints. In addition, the representatives initiate complaints about violations of the rights of children in care. Unlike most ombudsmen for children, however, they do not work through the media to bring attention to policy issues affecting children in care.

Although VCC provides an important model for ombudsman programs serving children in out-of-home care, several other countries have also established ombudsman programs. These programs provide valuable lessons in establishing successful ombudsman programs. The population served by these programs includes children in out-of-home care, who command disproportionate attention because of their vulnerability to government actions. Moreover, all of these programs are either in small countries or in the states of large countries and, therefore, operate at a level analogous to the State ombudsman office envisioned under the State Challenge grant program.

The first office of an ombudsman for children was established by the Norwegian parliament in 1981. The Norwegian office of ombudsman has been studied and described in professional literature more extensively than any other ombudsman program. Other countries, such as Costa Rica, New Zealand, and Sweden, have directly emulated the Norwegian office, and most other countries that have adopted ombudsman programs for children have used some elements of the Norwegian program.<sup>3</sup>

The law establishing the ombudsman’s office provides it with broad discretion “to promote the interests of children vis-a-vis public and private authorities and to follow up the development

of conditions under which children grow up.” The ombudsman has specific authority to participate in planning, to “ensure that legislation relating to the protection of children’s interests is observed, propose measures which can solve or prevent conflicts between children and society,” and educate the public about children’s rights. The ombudsman may act on his or her own volition or in response to particular cases, and may issue opinions whenever he or she chooses. The ombudsman also has free access to institutions and records.<sup>4</sup>

Within just a few years of the office’s inception, surveys of both adults and school-aged children in Norway showed that almost everyone knew about the ombudsman for children and approved of the office’s work. The office has addressed a wide-ranging number of issues, including the protection of refugee and immigrant children; prohibition of corporal punishment; regulation of violent toys and media; development of a ministry for children, youth, and families; and the psychosocial care of children in hospitals. Several important policy changes have resulted from the ombudsman’s advocacy, including the enactment of a law that requires local planners to take children’s interests into account in local planning decisions. Many of these initiatives have been the result of complaints sometimes brought by children themselves. However, the law establishing the ombudsman’s office provides that the ombudsman may not proceed in an individual case without the child’s permission, and that the ombudsman may not intervene in intrafamilial matters such as child custody disputes.

## Ombudsman Programs in the United States

In ways similar to the Scandinavian ombudsman programs, several States, including Alaska, Hawaii, Iowa, and Nebraska, have established State ombudsman programs that have the authority to investigate citizen complaints about administrative action or inaction. Such ombudsmen are usually based in the legislative branch of State government. Like their Scandinavian counterparts, State ombudsmen have broad legal authority to investigate complaints and render opinions.

Although the structure of ombudsmen’s offices in Scandinavia and the United States is similar, they differ in style. While ombudsmen in Scandinavia are highly visible public figures whose views are quite influential, American ombudsmen are low-profile. They work with agencies to resolve individual complaints—to “grease the wheels” of bureaucracy—and are seldom involved in policy debates.

Both Congress and the State legislatures have recognized, however, that some groups have difficulty getting their voices heard and have established specialized ombudsman offices for these groups. For example, specialized ombudsman offices have been created to address the needs of children under the JJDP Act and Senior Citizens under the Older Americans Act.

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## Child Advocacy Programs in the United States

Many U.S. programs engage in advocacy for children, but few use ombudsmen. Even though many States have nonprofit private organizations to promote children's interests, they rarely have offices or procedures for the receipt and investigation of individual complaints. Moreover, State ombudsmen's offices may receive complaints about agency handling of child welfare cases, but they do not advocate for children, nor do they receive or investigate complaints from the children themselves.

Some States have established agencies to serve as watchdogs for children,<sup>5</sup> although funding has been eliminated or significantly reduced in at least a couple of cases. Perhaps the best example of an ombudsman-like State agency for children in out-of-home care is the Rhode Island Office of the Child Advocate (OCA).<sup>6</sup> The OCA is a law office that protects the rights of children in the care of the Rhode Island Department of Children, Youth, and Family Services. The Child Advocate is appointed by the Governor. OCA has a budget of several hundred thousand dollars per year. It investigates hundreds of complaints each year and issues topical reports on problems of children in care. It also reviews all cases of children who die in out-of-home care. Ombudsmen's offices usually focus on administrative action, but the OCA, consistent with its identity as a law office, has been heavily involved in class litigation and has also initiated legislation.

### Key Elements

Three critical elements of the Norwegian model of ombudsmen for children must be preserved for ombudsman-like institutions for children to be successful in other countries.<sup>7</sup> They are as follows:

- An ombudsman must be chosen for his or her ability to provide objective leadership on children's issues.
- The ombudsman's autonomy and discretion must be protected.
- The ombudsman must be accessible to the children and have access to them.

In other words, the ombudsman must be a person to whom people will listen. The effectiveness of an ombudsman rests on his or her integrity, wisdom, and independence. If the ombudsman is not treated as an independent entity, similar to a judge in the U.S. judicial system, potential complainants will be deterred and the ombudsman's authority will be questioned.

Complainants must know about and be able to reach the ombudsman. For children in out-of-home care, this principle may mean that the ombudsman has an office or visiting hours in the children's facilities. There must be systematic efforts to educate children and citizen advocates about the ombudsman's availability and to demonstrate that complaints can be made, heard, and taken seriously without fear of retaliation. The om-

budsman should have statutory authority to visit facilities, see children, and view records.

### Issues to Consider

**Jurisdiction.** Although funds for State Challenge grants are available for ombudsman offices to serve children in out-of-home care, the State may consider establishing offices for children in general, with Federal funds then used for ombudswork for children in out-of-home care. The broader purpose—establishing offices for children in general—may meet with greater community acceptance and, at the same time, address the needs of children placed in out-of-home care.

**Public or private?** The JJDP Act provides that State ombudsman offices may be either State agencies or private organizations under contract, provided that the agency selected is not involved in the provision of out-of-home care. Private child advocacy organizations generally have greater independence from government bureaucracies, and may therefore be more direct in their criticism. However, public agencies may have greater access to government authorities and may garner more respect from them. In either instance, however, agencies may face conflicts of interest when there is reason to believe that their funding or status is in jeopardy. *Regardless of the auspices under which the ombudsman works, care must be taken to ensure his or her independence.*

**Legislative or executive?** In the classic model, the ombudsman is a representative of the legislature who oversees the performance of the executive agencies. In many States, however, this function does not fall to legislative staff. Again, the key point is to protect the independence of the ombudsman. This can be done by creating for the ombudsman a term of appointment that does not correspond to the term of the elected official or entity that makes the appointment.

**Authority.** The statute or executive order establishing the ombudsman office should clarify the ombudsman's responsibilities (e.g., whether he or she may initiate litigation on behalf of children in care) and the strategies that he or she may use in investigation (e.g., whether the ombudsman will have subpoena power).

### Conclusion

Few can question the need to give children, especially children in out-of-home care, a voice. The State Challenge grants provided under the JJDP Act will create an ombudsman office to represent the interests of these children. This program offers an opportunity to apply models that have worked effectively in other countries, models that can be successfully applied here to promote and protect the interests of children.

### Suggestions for Further Reading

Davidson, H.A., C.P. Cohen, and L.K. Girdner (eds.). 1993. *Establishing Ombudsman Programs for Children and Youth: How Government's Responsiveness to Its Young Citizens Can Be Im-*

*proved*. Washington, D.C.: ABA Center on Children and the Law.

This volume describes the work of ombudsmen for children around the world, with special attention given to U.S. State agencies that serve as watchdogs for children. Descriptions are also provided of programs in Austria, Belgium, Canada, Finland, Guatemala, New Zealand, Norway, Sweden, and the United Kingdom.<sup>8</sup> Although all of the programs described do some ombudswork, some of them lack the independence and exclusive focus on advocacy, as distinguished from service delivery, that typify successful ombudsman programs.

The editors also include the relevant excerpt of the American Bar Association's own Juvenile Justice Standards for Monitoring and a seven-page list of names, addresses, and phone numbers of both U.S. and foreign experts on ombudswork for children. For further information, contact the ABA Center on Children and the Law (Howard A. Davidson, Director), 1800 M Street NW., Washington, DC 20036; 202-331-2250; Fax 202-331-2225.

Flekkøy, M.G. 1990. *Working for the Rights of Children: The Experience of the Norwegian Ombudsman for Children* (Innocenti Essays No. 1). Florence, Italy: UNICEF International Child Development Centre.

Flekkøy, M.G. 1991. *A Voice for Children: Speaking Out as Their Ombudsman*. London: Jessica Kingsley.

Melton, G.B. 1983. *Child Advocacy: Psychological Issues and Interventions*. New York: Plenum.

Melton, G.B. (ed.). 1987. *Reforming the Law: Impact of Child Development Research*. New York: Guilford.

Melton, G.B. 1991. "Lessons from Norway: The Children's Ombudsman as a Voice for Children." *Case Western Reserve Journal of International Law*, 23: 197-254.

Målfrid Grude Flekkøy was the first ombudsman for children in Norway, the first country to have such an ombudsman. She later studied monitoring mechanisms as a fellow at the UNICEF Centre. She is now interim director of the Division on Families and Global Change in the Institute for Families in Society at the University of South Carolina, Columbia, SC 29208; 803-777-9124; Fax 803-777-1120.

UNICEF's International Child Development Centre maintains a clearinghouse for information on children's rights, including models for monitoring the fulfillment of such rights. Flekkøy's 1990 monograph and other information about ombudsman programs around the world may be obtained from the UNICEF International Child Development Centre, Piazza SS. Annunziata 12, 50122 Florence, Italy; 3955/234-5258; Fax 3955/244817.

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803-777-9124; Fax 803-777-1120. His research includes analyses of the various strategies for monitoring and advocating children's rights, and for bringing social science research to bear on children's issues.

## Endnotes

<sup>1</sup> Juvenile Justice Standards. Std. 7.1 (approved by the American Bar Association House of Delegates, 1979).

<sup>2</sup> Davidson, H.A., C.P. Cohen, and L.K. Girdner (eds.). 1993. *Establishing Ombudsman Programs for Children and Youth*. Washington, D.C.: ABA Center on Children and the Law, pp. 58-59.

<sup>3</sup> The Norwegian Office of Ombudsman was established by the Storting Act Number 5 (March 6, 1981), relating to the Commissioner for Children, § 3.

<sup>4</sup> *Ibid*.

<sup>5</sup> The Help for Children program of the Massachusetts Office for Children (OFC) performed many of the functions of a children's ombudsman. For a description of OFC and similar private programs, see Gary B. Melton, *Child Advocacy: Psychological Issues and Interventions* (1983), pp. 89-108.

<sup>6</sup> *Establishing Ombudsman Programs*, pp. 95-98.

<sup>7</sup> Gary B. Melton. 1991. "Lessons from Norway: The Children's Ombudsman as a Voice for Children." *Case Western Reserve Journal of International Law* 23: 197.

<sup>8</sup> One program not included in the ABA review that is similar to the type of office to be funded under the JJDP Act and that has attracted international attention is the Children's Interests Bureau in South Australia. A State-level office directed by Sally N. Castell-McGregor, the Bureau is located at 64 Grenfell Street, Adelaide, S.A. 5000, Australia; (61 8) 226-7052; Fax (618) 226-7088.

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