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center for children's advocacy newsletter for attorneys representing children in connecticut

JULY 2008

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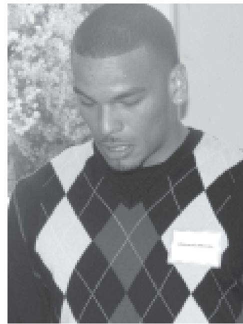
CENTER FOR CHILDREN'S ADVOCACY CELEBRATES TEN YEARS OF SERVICE TO CONNECTICUT'S CHILDREN

Awards Presented to Key Contributors to Well-Being of Poor Children

On May 1, 2008, over 200 people joined the Center to celebrate ten years of service to Connecticut's abused and neglected children. Held at Greater Hartford Academy of the Arts, the evening's festivities featured award presentations to five people who have been instrumental in the success of CCA, and short talks by two young adults, Gio Mendez and José Flores, who are represented by CCA attorneys.

Gio spoke emotionally and eloquently about his representation by CCA Teen Legal Director Stacey Violante Cote many years ago. Stacey began to work with Gio when he was a young, homeless student, trying hard but unsuccessfully to get to classes at Hartford Public High School. Gio was in danger. With no family to turn to for support and no place to sleep each night, Gio was living on the streets of Hartford. Now in his second year of college, and working full time at a Hartford-area group home for homeless teens, Gio is a success by anyone's measure.



Gio, a client of Stacey Violante Cote's, delivers an emotional thank you.

José talked about the ongoing support consistently provided by CCA Executive Director Martha Stone. When José and his siblings were removed from their home by DCF, each of the children was placed in a separate location, some out of state. Facing enormous emotional and legal challenges, José needed support and stability. Martha's advocacy secured local placements for José's brothers and she helped resolve many of the difficulties in José's young life. José is now a second year college student with a bright future.

CCA honored five people whose work has been instrumental in improving the well-being of poor children in Connecticut:

Honorable Robert Chatigny received the Center's Children's Justice Award. Judge Chatigny's decisions in Emily J. v. Weicker

see ANNIVERSARY, page 5

SHEFF v. O'NEILL II

New Settlement Agreement Substantially Expands Interdistrict Educational Options

Martha Stone, Esq.

Brief History

The Sheff v. O'Neill case was filed on April 26, 1989 when Milo Sheff, our first named plaintiff, was ten years old. Today, Milo is almost thirty!

When the Connecticut Supreme Court rendered its landmark decision in 1996, it stressed the urgency in addressing the issue of educational inequalities: "Every passing day denies (Hartford's public school) children their constitutional right to a substantially equal educational opportunity. Every passing day shortchanges these children in their ability to learn to contribute to their own well-being and to that of this state and nation….."

see SHEFF, page 3

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CCA MOURNS PASSING OF RUTH PULDA

Ruth Pulda, one of the original members of Center for Children's Advocacy's Board of Directors, passed away on June 9, 2008 after a long battle with lung cancer. A partner at Livingston, Adler, Pulda, Meiklejohn and Kelly, Ruth was former chairwoman of Connecticut's Permanent Commission on the Status of Women, and cofounded the Women's Rights Clinic at the University of Connecticut School of Law.

Thank you to all who have made donations to the Center in Ruth's memory. A new fund will be named for Ruth Pulda, and contributions used for CCA programs that support girls in Connecticut's juvenile justice system.

Ruth was a member of CCA's Board of Directors for ten years. We will all miss her friendship, dedication, enthusiasm, intelligence and insight.

NHI TRAN JOINS CCA'S IMMIGRANTS AND REFUGEES: NEW ARRIVALS ADVOCACY PROJECT

Nhi Tran was born in Vietnam. Due to the Communist regime, Nhi's family fled to Hong Kong by boat and lived in a refugee camp for two years, resettling in California when she was young. As a refugee herself, Nhi has a unique understanding that she brings to her work on CCA's new immigrants and refugees advocacy project.

Nhi speaks Vietnamese and has studied Chinese, Italian, and Spanish. She graduated from UCLA in 2000, and from NYU Law School in 2005.

Nhi practiced housing law at the Legal Aid Society of Hawaii for two and a half years before joining Center for Children's Advocacy as staff attorney on the Center's New Arrivals Project.

Nhi Tran can be reached at 860-570-5327, or ntran@kidscounsel.org.

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NEW SHEFF AGREEMENT

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Unfortunately, despite this admonition, the plaintiffs have been forced to return to court no less than four times since 1996, using this case as a catalyst to prod the state and the legislature to take remedial measures to address the educational disparities facing the thousands of Hartford students who remain in segregated and unequal schools.

A four year agreement, reached in March, 2003, stipulated that thirty percent of Hartford students would experience reduced racial isolation through educational opportunities at magnet schools, school choice, and interdistrict cooperative programs.

When plaintiffs went back to trial in the fall of 2007, sadly, fewer than eight percent of Hartford students were in a reduced isolation setting.

Pending a decision by the trial judge, the parties negotiated a new Settlement Agreement which has secured both the necessary legislative action, and approval by Judge Marshall Berger.

Terms of New Settlement Agreement

For the first time, the Agreement includes a system that is driven by the *demand* of Hartford-resident minority students for integrated education.

- The Supreme Court's ruling in *Sheff* established that all students in the Hartford region have a right to an integrated education, and this settlement moves toward a system in which every student who wishes to exercise this right can do so.

- Benchmarks remain, to ensure that opportunities for integrated education increase steadily over time. The state must meet these numerical goals, but the aim is to make the availability of integrated education proportionate to the demand for it.

The Settlement Agreement requires the State to plan more effectively to make sure that *Sheff* solutions work.

- Settlement Agreement requires a detailed Comprehensive Management Plan, which outlines goals and specifies how the State will meet and measure them. *This is the first time the state has ever implemented a comprehensive plan to coordinate all Sheff remedies.*

- SDE Sheff Office will oversee implementation of the Comprehensive Management Plan and serve as the central authority responsible for the planning, development, and implementation of all *Sheff* programs.

- Agreement creates a Regional School Choice Office, which will support collaborations between the State and stakeholders, including CREC and the City of Hartford, who will implement *Sheff* programming. This office will include a representative of the *Sheff* plaintiffs.

- Agreement makes the state accountable for taking certain clearly defined steps and meeting goals for integrated education.

- Settlement increases the plaintiffs' ability to have input into and enforcement of the terms of the Agreement, and provides plaintiffs with meaningful opportunities to go back to court if the state is not complying.

The Settlement Agreement requires the State to take steps to increase the success of *Sheff* schools. Among other goals, the plan requires that the state:

- Conduct outreach to Hartford and suburban parents to help determine which types of programs will be most popular.

- Establish methods to determine capacity in suburban districts for Open Choice, and to increase participation by suburban districts.

- Establish clear processes for choosing the location and design of new magnet schools.

- Help magnet schools improve educational performance and become more integrated.

The Settlement Agreement requires concrete improvements that will help make it easier for families to participate in *Sheff* schools. These improvements include:

- Single application process for Hartford-resident minority students who wish to apply to any *Sheff* program.

- New information service center for families seeking information and advice on options for integrated education.

- General marketing and targeted recruiting in historically underrepresented communities to let families know about *Sheff* options.

- Academic and social support services for students participating in interdistrict schools, particularly to support out-of-district students.

- Expanded options for racially integrated pre-schools.

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Jane Baird (left), Advocacy Coordinator, Connecticut Children's Medical Center; and DCF Commissioner Susan Hamilton.

Civil rights attorney John Brittain addresses the crowd after receiving the Center's Founder's Award, which was presented to him by Michael Perez, Esq., one of the original plaintiffs in Sheff v. O'Neill.

Congressman Chris Murphy addresses the crowd after receiving the Center's Legislative Guardian Award for his work to establish the Commission on Child Protection. Congressman Murphy's award was presented by CCA Teen Legal Clinic Director Stacey Violante Cote.

Fran Ludwig (left) presents Martha Stone with a commemorative ceramic piece she created for the occassion.

Kathryn Emmett, Chair of CCA's Board of Directors, accepts a Founder's Award.

The audience, including (from left) Cathy Holihan, Elihu Stone, Honorable Robert Chatigny, and John Brittain, shares their appreciation in the growth of the Center.

ANNIVERSARY continued from page 1

improved conditions of confinement and expanded community based mental health services for youth in the juvenile justice system.

Dr. Paul Dworkin received CCA's Health Advocate Award. Dr. Dworkin, Physician in Chief at Connecticut Children's Medical Center, is co-founder of CCA's Medical Legal Partnership Project, helping children and families with medical needs that are often a result of poverty.

The Legislative Guardian Award was presented to **U.S. Congressman Chris Murphy**. While in the Connecticut Legislature, Congressman Murphy championed the Bill that established the Commission on Child Protection, improving the quality of legal representation for poor children.

Founder's Awards were presented to **Kathryn Emmett, Esq.**, **John Brittain, Esq.**, and **Martha Stone, Esq.**, co-founders of the Center for Children's Advocacy.

Our thanks go out to all who attended the celebration and all who so generously continue to support the critical work the Center does. On to the next ten!

Martha Stone and Honorable Robert Chatigny display their awards. Judge Chatigny received the Children's Justice Award for his work to improve conditions of confinement and expand community-based mental health options for youth in the juvenile justice system. Martha Stone was presented with a Founder's Award.

José smiles after presenting Martha Stone with a Founder's Award and sharing his appreciation for her ongoing dedication to his family.

Dr. Paul Dworkin (right) co-founder of CCA's Medical Legal Partnership Project (MLPP), is presented with a Founder's award by Jay Sicklick, CCA Deputy Director and Director of CCA's MLPP.

Former CCA Attorney Gladys Idelis Nieves, and CCA Social Work Consultant Christian Philemon.

Child Advocate Jeanne Milstein (left) and Assistant Child Advocate Mickey Kramer.

KEEP THE POWER ON

ADDRESSING CHILDREN'S ENVIRONMENTAL HEALTH

Bonnie Roswig, Esq.

One of the fundamentals of living in a safe environment is continuing utility service. Connecticut supports this notion and has enacted laws which ensure that low income families do not face utility termination during the winter months. This past year (November 1, 2007 through May 1, 2008), state law assured low income families that their utility service would be protected and service not terminated even if they did not meet their monthly utility bills.

This winter moratorium protects ongoing service but does not stop utility debt from accruing. Many low income families forgo making utility payments over the winter months, opting instead to focus their limited funds on rent, food, clothing, etc. Unfortunately, once the moratorium from utility termination expires, families are faced with large arrearages. By May, they are again threatened with utility termination and have no means to cover the outstanding debt.

Keep the Power On was developed with two primary goals:

1) ensure that low income families have continuing utility service, and
2) provide financial counseling to families to stop the yearly crisis of confronting termination.

CCA's *Keep the Power On* is a collaborative project of the most productive kind. Initiated this past March by Attorney Bonnie Roswig of the Medical Legal Partnership Project, CCA staff oversee the project and work with key community partners. Utility companies and other community partners provide counseling and support for essential services such as energy assistance, job opportunities, and health services; CCA trains pro bono volunteers to provide financial counseling to families in need of support.

This year's first clinic took place on April 26 in Coventry. Hosted by volunteer chair Robert Flanagan, volunteers included employees from United Technologies, private law firms, Superior Court staff, and students from University of Connecticut School of Law. Northeast Utilities was on site to provide affordable payment plans to 25 families; Congressman Joe Courtney was on site to lend his support; Town of Coventry Administrative Assistant Heidi Donnelly, Human Services Administrator Courtney Chan, and Town Manager John Elsesser were instrumental in organizing the event.

The second clinic, co-hosted by Attorney Stacey Violante Cote of the Teen Legal Advocacy Clinic, was held at Hartford Public High School (HPHS) and attended by 25 families who needed help with utility issues. HPHS administrative staff and Parent/Teacher Organization representatives organized and publicized the event; Aetna provided volunteers to assist the clients and a grant to purchase refreshments. Volunteers from Hartford's Community Renewal Team (CRT) helped clients complete applications for Energy Assistance, Co-opportunity provided counseling on job-related issues, and Connecticut HUSKY Medicaid representatives provided information about medical issues. Northeast Utilities staff assisted clients in avoiding utility termination and entering into affordable payment arrangements; other pro bono volunteers in private practice also provided assistance to clients.

The next goal of *Keep the Power On* is to increase the number of clients we can assist and coordinate with new partners to educate the community about the needs of our clients. Next fall's clinic sites may include St. Francis Hospital, Connecticut Children's Medical Center, the community health centers served by CCA's Medical Legal Partnership Project, and Harding High School in Bridgeport. Plans are being put together now to hold *Keep the Power On* clinics before the winter utility moratorium begins.

For additional information, please contact Bonnie Roswig, Senior Staff Attorney, MLPP, at 860-545-8581 or *broswig@ccmckids.org*.

CCA PRESENTS "KEEP THE POWER ON" AT NATIONAL EQUAL JUSTICE CONFERENCE

Bonnie Roswig recently presented at the national ABA/NLADA Equal Justice Conference in Minneapolis. Her first presentation focused on integrating Pro Bono work into the first year law school curriculum, using the Center for Children's Advocacy's *Keep the Power On* utility program as a model. The presentation was done in conjunction with the Dean of William Mitchell Law School and faculty from University of Connecticut and Berkeley Schools of Law.

A second presentation focused on effective statewide integration of programs for low income individuals and families, and included panelists from New York, Montana, and Washington State.

Bonnie reported that there was a significant presence of Medical Legal Partnership (MLP) program representatives from programs throughout the country. The ABA Center for Pro Bono work announced the creation of a new position at their national headquarters to coordinate pro bono resources for MLPPs.

SHEFF continued from page 3

- Review and improvement of transportation services for students in *Sheff* schools.

The Settlement Agreement aims to improve educational quality of all Hartford-area schools, whether or not they are *Sheff* schools.

- Settlement requires that all Hartford regular, non-magnet schools pair with *Sheff* magnet schools, to assure that all HPS students benefit from *Sheff*.
- High-performing magnet schools will serve as training centers for teachers and administrators throughout the *Sheff* region.

The Settlement Agreement requires plaintiff input and oversight.

- Settlement requires the plaintiffs to have input and sign-off on the Comprehensive Management Plan.
- Plaintiffs will have a representative in the Regional School Choice Office, partially funded by the State, who will be involved in the planning and implementation of *Sheff* initiatives
- State will give plaintiffs' expert access to information, pay the costs of plaintiffs' expert up to $7500/year and meet regularly with plaintiffs.

For a full version of the agreement, go to:
www.kidscounsel.org/legalresources.education

Sheff agreement includes a system driven by *the demand* of Hartford-resident minority students and requires concrete improvements that make it easier for families to participate . . .

PRO BONO SUCCESS STORY

SUCCESSFUL OUTCOME FOR FAMILY WITH NOWHERE TO TURN

Jay Sicklick, Esq.

McCarter & English Teams with CCA's Medical-Legal Partnership Project

The Medical Legal Partnership has long counted on its relationships with private law firms to provide pro-bono assistance to an ever-growing client base. A recent case handled by an MLPP Pro-Bono affiliate law firm, McCarter & English, LLP, illustrates how the MLPP's public interest-private bar partnership can work to improve outcomes for low-income families dealing with the stressors of legal inequalities.

In November 2005, W.L., a mother of two school-aged boys, sought legal advice from an MLPP attorney at its walk-in clinic at Community Health Services (CHS) pediatric primary care center in Hartford. CHS has been an MLPP affiliate since December 2003 and MLPP attorneys have worked with CHS's pediatric and women's health clinicians since that time, providing on-site assistance and individual representation to children and families at risk.

Two months prior to the case intake, W.L., a public housing resident who lives in a Hartford Housing Authority (HHA) apartment, realized that her car had been towed from an authorized HHA parking space, moved to a storage lot by a contracted towing company, and sold for scrap metal, all without notice to W.L. The resulting loss of the car left W.L. without a way to get to her two places of employment. Thus, W.L. and her children were at risk for potential eviction due to the loss of income that resulted from her inability to access transportation to her work sites.

After researching the legal issues and investigating the facts of W.L.'s case, the MLPP attorney referred the file to McCarter & English's Hartford office, where KirkAndré Durrant, a McCarter associate, took over the handling of the matter. Durrant conducted further investigation and learned that W.L. had previously requested two grievance hearings with HHA to contest the towing and disposal of her car. Upon learning that the HHA had not responded to W.L.'s grievance requests, Durrant filed suit in Superior Court, seeking monetary damages against both HHA and the towing contractor.

During the course of the litigation, Durrant added a claim seeking lost wages due to W.L.'s inability to access her sole mode of transportation to work, and fought off several substantive and procedural challenges from both the HHA and the towing company. At a recent arbitration, W.L.

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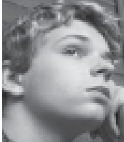


SUBSTANCE ABUSE AND TEENS

CAN A SCHOOL EMPLOYEE HELP A TEEN GET TREATMENT FOR SUBSTANCE ABUSE WITHOUT REPORTING TO LAW ENFORCEMENT?

Stacey Violante Cote, Esq, MSW

Scenario:

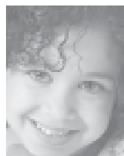
Mark, a 15 year old high school student, is called into the Vice Principal's office because he has been repeatedly cutting classes. He admits that he has been smoking marijuana for some time, and he wants to quit. Mark hands her a bag of marijuana and asks for her help. The Vice Principal tells Mark that she has to report this to the Principal and to law enforcement. He's scared of getting expelled from school and calls his lawyer in a panic. Is there anything his lawyer can do to help him?

There is a little known Connecticut statute which could give Mark some relief in this situation. Connecticut General Statutes, §10-154a, "Professional communications between teacher or nurse and student. Surrender of physical evidence obtained from students", gives specified school employees the authority to keep Mark's information confidential. The statute indicates that any professional employee of a public or private school including faculty, administration officers, or a registered nurse assigned to a school, shall not be required to disclose any information acquired through a professional communication with a student when the information relates to drug or alcohol abuse by the student. The employee is, however, required to turn over any physical evidence obtained from such professional communication to law enforcement or the Commissioner of Consumer Protection within a specified period of time. Note that a professional communication is any communication made privately and in confidence by a student to a professional employee of the student's school in the course of employment.

If the administrator in Mark's scenario were willing to invoke this statute, she would have to hand over the bag of marijuana to law enforcement or the Commissioner of Consumer Protection, but she could do so without providing Mark's name. Given that Mark has expressed an interest in seeking treatment, this would allow him to do so without fear of arrest for drug possession or expulsion from school. A question that the Vice Principal may have is whether or not she would have to report this instance to the Department of Children and Families (DCF) under her mandated reporting responsibilities per CT General Statutes § 17a-101a. This statute requires reports if she has reasonable cause to suspect or believe that Mark has been abused or neglected, or is at imminent risk of serious harm. Here, it seems that mandated reporting is not necessary unless the Vice Principal has information that gives her reason to suspect that Mark is a victim of abuse or neglect (ie: he smokes marijuana to escape abuse at home), or that he is at imminent risk of serious harm (ie: he has been kicked out of his house due to his marijuana use and is living on the streets).

It is important to let Mark know his rights as a minor seeking substance abuse treatment. Connecticut General Statutes §17a-688(d) allows a minor to seek confidential substance abuse treatment or rehabilitation without parental consent. If he chose to pursue treatment without parental consent, he would therefore be responsible for the costs. Taken together, these statutes work to promote teens' access to substance abuse treatment.

For more information, our publication, "Adolescent Health Care: Legal Rights of Teens," may be ordered at *www.kidscounsel.org/publications*.



PRO BONO SUCCESS STORY
SUCCESSFUL OUTCOME FOR FAMILY WITH NOWHERE TO TURN

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accepted an offer from both of the defendants which completely compensated her for the value of her car, as well as all ancillary damages sought, including the lost wages.

To W.L., the monetary recovery is only part of the victory she feels as a result of McCarter & English's successful advocacy. "To me, the money is not nearly as important as the confidence I felt for righting the wrong done to me. I'm extremely grateful for both lawyers who allowed me, for the first time, to fight back and get what was rightfully mine."

For the MLPP, the artful work of KirkAndré Durrant and his McCarter colleagues exemplifies what the pro-bono network is all about – achieving successful outcomes for families who have nowhere else to turn.

If you would like information about joining the MLPP's pro bono network, please contact Jay Sicklick at 860-714-1412 or *jsicklick@kidscounsel.org*.

IMMIGRANTS AND REFUGEES: NEW ARRIVALS ADVOCACY PROJECT
CCA Presents at National Robert Wood Johnson Grantee Conference

Jay Sicklick, Esq.

Center for Children's Advocacy's *Immigrants and Refugees: New Arrivals Advocacy Project (New Arrivals)* was featured at a national gathering of Robert Wood Johnson Foundation (RWJF) grantees this past March in Los Angeles. *New Arrivals* falls under the direction of CCA's Medical-Legal Partnership Project (MLPP), and is designed to improve health and educational outcomes for Hartford's newest immigrants and refugees through collaborative intervention and interdisciplinary advocacy. Working with the Hartford-based Refugee Assistance Center housed at Jubilee House in the City's south end, *New Arrivals'* lead attorney Nhi Tran is working with the refugee and immigrant community on health, education and housing matters that directly affect the health and welfare of the region's most vulnerable children.

RWJF Grantee Conference

Conference organizers recognized CCA as one of only ten "Fresh Ideas" grantees chosen from over 1000 applications received. The Fresh Ideas grant program is part of RWJF's $83 million Vulnerable Populations portfolio, which seeks to "support promising new ideas to help overcome longstanding health challenges for the people in society who bear an excess of the burden of disease."[1]

As part of the *Caring Across Communities* grant program, Fresh Ideas grantees are required to address three basic criteria:

· How health and social systems can accommodate the unique needs of different and changing immigrant and refugee populations

· How communities can engage in helping immigrants and refugees maintain and improve their health

· What strategies can overcome barriers that immigrants and refugees face when trying to access health and social services [2]

New Arrivals is the only legal advocacy project amongst RWJF's Fresh Ideas and Caring Across Communities grantees. With this grant, the MLPP joins the Cleveland and Boston medical legal collaborative programs as RWJF funded medical-legal partnerships.

New Arrivals Project Update

Under the direction of Nhi Tran, *New Arrivals* is working with Jubilee House's immigrant and refugee outreach worker, Lina Caswell, and the Refugee Assistance Center's director, Jody Putnam. The project has already taken on a substantial caseload, handling matters concerning education, housing and access to mental health services.

Nhi Tran and Jay Sicklick recently presented at Saint Francis Hospital & Medical Center's Pediatric Department Grand Rounds on legal issues and barriers to health care facing new immigrants and refugees in the greater Hartford Community. *New Arrivals* staff are working to develop resource tool kits for immigrant providers (health and educational professionals) as well as immigrant families, and legal staff have begun to target systemic issues affecting new immigrant and refugee children, such as access to appropriate medical interpretation, and access to mental health services.

For information on the *New Arrivals Project*, contact Nhi Tran at 860-570-5327 or *ntran@kidscounsel.org*.

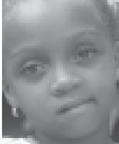
Footnotes

[1] See *www.rwjf.org/programareas/programarea.jsp?pid=1144*

[2] See *www.rwjf.org/applications/solicited/cfp.jsp?ID=19480*

Vulnerable immigrant and refugee children face barriers to education and health care.

CCA's new project works with these families to access needed services.



US DISTRICT COURT DISMISSES CONNECTICUT CHALLENGE TO NCLB

NEW SECOND CIRCUIT APPEAL EMPHASIZES UNFUNDED MANDATE OBJECTION

Connecticut v. Spellings
___ F. Supp. 2d ___ (D. Conn. 2008)
NO.3:05CV1330 (MRK) (April 28, 2008)

Jeremy Cline, CCA Legal Intern

In a significant decision, the United States District Court dismissed the last remaining challenge brought by the state of Connecticut to the No Child Left Behind Act (NCLB). In the case of *Connecticut v. Spellings*, the state (through Attorney General Richard Blumenthal), had argued that the Secretary of Education's rejection of Connecticut's existing testing plan was arbitrary and capricious. Additionally, it claimed that the Secretary's interpretation of the NCLB Act violated the Act's provision prohibiting "unfunded mandates."

The NCLB Act of 2001 requires states to submit educational plans to the Secretary of Education. The plans must consist of "academic content standards" that will be measured by a single accountability system. Assessments are required annually of all children in math, reading, and language arts. For disabled children and students with limited English proficiency (LEP) the state must develop separate measurable annual objectives for substantial improvement.

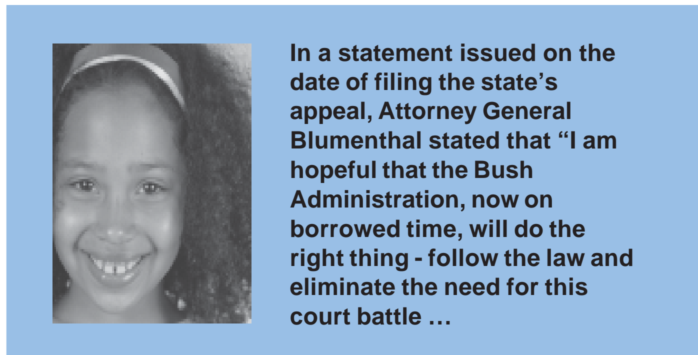
The Act empowered the Secretary of Education to "issue regulations . . . to ensure compliance with the act." One such regulation promulgated by former Secretary of Education Rod Paige, required states to test special education students and LEP students at grade-level standards. Congress provided only one exception to this requirement when it passed the Individuals with Disabilities Act (IDEA) in 2004, which exempted the one percent of the population with the most significant cognitive disabilities. For those students, the State may measure achievement by alternative standards. The Secretary also held that while the NCLB exempted LEP students from reading and language arts assessment for the child's first year of school in the United States, they must still test them in math and English language proficiency.

The present case originated as a result of a Connecticut proposal to assess special education students at instructional levels rather than grade levels, and also to exempt recently arrived LEP students from testing for three years instead of the one year that the Act provides. After the Secretary of Education denied this plan, Connecticut brought suit alleging that her decision was arbitrary and capricious. The Secretary alleged that her denial was not arbitrary, but was based upon Connecticut's noncompliance with the statute's requirements. This District Court, in several decisions, agreed with the Secretary.

The Court, in a decision authored by District Judge Mark Kravitz, found that Congress expected the same academic standards to be applied across the board. He noted that Congress provided only one exception to NCLB, and that was the one-percent exception from the IDEA. The court also rejected Connecticut's argument concerning LEP students. The court noted that the three year exemption "flew in the face" of the Act's annual assessment provision. The one-year exemption was not an invitation to flexibility.

Connecticut's other objection was that the Secretary's interpretation of the Act violated the unfunded mandate provision in the Act. Connecticut argued that the Act, by requiring states to test without providing funding, violated the unfunded mandate provision. The court noted that this was an important issue, but ultimately declined to rule on it. It found that Connecticut had yet to timely object to the Secretary's interpretation so as to give rise to a legally reviewable issue. It noted simply, that a reasonable person could not find that Connecticut had raised this issue to the Secretary for correction with the requisite specificity and clarity before raising it in court. The court noted that it was unfortunate that Connecticut had yet to do this, and suggested that Connecticut go back again and raise this issue. With that, the court dismissed the state's challenge to the statute. Connecticut has since appealed this decision to the Second Circuit Court of Appeals again emphasizing its unfunded mandate objection. In a statement issued on the date of filing the state's appeal, Attorney General Blumenthal stated that "I am hopeful that the Bush Administration, now on borrowed time, will do the right thing - follow the law and eliminate the need for this court battle … [t]he U.S. Department of Education has reneged in its responsibility to Connecticut students, failing to provide full federal funding to schools."

A copy of the decision may be downloaded at
www.kidscounsel.org/caselibrary_education_spelling.htm



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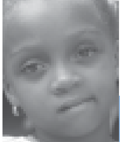
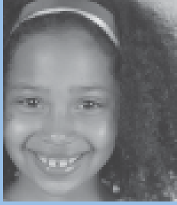


Davonta V.

285 Conn. 483 (February 12, 2008)
Connecticut Supreme Court



Court affirms termination of parental rights on grounds that the court did not erroneously find that termination was in the best interests of a teenager who had strong ties with biological siblings and was not living in a pre-adoptive home.

The fundamental question raised in this interesting appeal of a termination of parental rights is whether it is ever in the child's best interest to terminate her parental rights when an adoptive family has not been secured and the child maintains a good relationship with her extended biological family. The answer, according to the Supreme Court, is that termination was in the child's best interest (in this case), despite factors noted above.

Davonta's case first reached the Superior Court in 1999, when the Department of Children and Families (Department) commenced a neglect petition alleging educational, medical and physical neglect against Davonta, then a six year old child. After a flurry of activity, the Department sought and received an order of temporary custody in May 2000, and the court adjudicated her neglected in October 2000, whereupon she was committed to the care of the Department and placed in foster care. A petition for termination of parental rights (TPR) followed in December 2002, alleging that Davonta had been denied proper care and attention and that her mother had not achieved personal rehabilitation. After a trial that spanned several months in 2004 and 2005, the court terminated the parents' parental rights on the aforementioned grounds, and determined that the Department had made reasonable efforts to reunify Davonta with her mom pursuant to Conn. Gen. Stat. § 17a-112(j). The appellate court (with a dissenting Judge Schaller) affirmed the termination, and the Supreme Court granted review solely on the issue of whether the trial court correctly applied the appropriate standard of review in the TPR proceeding.

The court based its affirmation on what it considered the overwhelming evidence produced at the trial, including … mom's repeated absences from Davonta's life for long periods of time, her multiple placements in foster care, Davonta's struggle with issues of abandonment and feelings of rejection, who remains a "very adoptive child" who "wants to be part of a family." The court seemed to give great credence and afforded significant weight to the evidence demonstrating that her current (as of the trial) foster placement was stable, loving, long-term permanent and supportive, and that she had expressed wishes to remain with them "forever." In addition, Davonta expressed no willingness to either meet with or live with her mother.

The crux of the legal analysis fell on the issue of whether the evidence upon which the trial court relied amounted to a clear an convincing showing by the Department that termination of parental rights was in her best interests given the positive relationship she maintained with her biological family – and that adoption by her loving foster family was not guaranteed. As to the first issue – the court upheld the Appellate Court's holding that the law does not preclude termination of parental rights simply because the adoption of the child is not imminent. Citing a slew of cases affirming the principals that adoption is indeed the preferred outcome, but not a necessary prerequisite for termination, the court would not disturb the trial court's decision based on the foster parent's reluctance to proceed ahead with adoption. See e.g. In Re Romance M., 229 Conn. 356 (1993) (long-term stability critical to a child's future health and development; In re Eden F., 250 Conn. 674 (1999) (adoption provides only one option for obtaining such stability); In re Theresa S., 196 Conn. 18 (1985) (parents' rights can be terminated without an ensuing adoption).

The court addressed the potential impairment of Davonta's relationship with other members of her extended family due to the termination by noting that Davonta's foster parents did not oppose, and in fact, encouraged that she maintain her relationships with her biological family.

Finally, the overriding need for Davonta's permanency, as confirmed by all testimony at the trial, carried the day in terms of what constituted her best interests in terms of permanence and stability. Her experiences with disruption and trauma led the court to conclude that permanence and stability were best ensured through termination of parental rights.

This case may be accessed at *www.jud.state.ct.us/external/supapp/Cases/AROcr/CR285/285CR35.pdf*

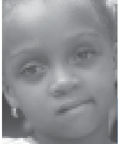
Shanaira C.

105 Conn. App. 713 (February 12, 2008)

Court rejects non-relative intervener's argument that she was erroneously denied a full evidentiary hearing on disputed motion to revoke commitment and transfer guardianship to non-custodial parent. Cert granted to Ct. Supreme Court.

How much intervention should be allowed by an intervenor at a revocation hearing? The answer, according to the Appellate Court in Shanaira C., is not that much, despite a thoughtful and reasoned dissenting argument.

The issues stem from allegations of medical and educational neglect, as well as domestic violence and drug abuse in Shanaira's home. In March 2006, the Department of Children and Families (Department) sought and was granted an order of temporary custody, whereupon Shanaira's father's



girlfriend, Stephanie E., moved not only to intervene in the case, but also filed motions to transfer guardianship of Shanaira to herself, and for visitation. At a three-day trial in October 2006, the court adjudicated Shanaira neglected, and denied Stephanie's motions for guardianship and visitation. On December 15, 2006, the court heard the Department's motion to revoke Shanaira's commitment on the ground that reunification with her mother in Florida was in her best interest. Stephanie opposed the motion, indicating her desire to introduce testimony from her mother and Shanaira's aunt (who was also the foster mother). After hearing testimony from the aunt, Stephanie, and Shanaira's teacher, and on the basis of statements by counsel and reports submitted by the Department, the court revoked Shanaira's commitment and granted sole custody to the respondent mother.

The first issue on appeal was whether Stephanie had standing as an intervenor to bring the appeal. Citing Practice Book § 35a-4 (intervention permitted in dispositional phase of the trial), the court found that because the court's ruling revoking the commitment was adverse to the intervenor's interest in the dispositional phase of the neglect petition, Stephanie had standing to bring the appeal.

As to her claim that the court violated her due process rights by failing to hold an evidentiary hearing on the motion to revoke commitment, the court used the time-honored Mathews v. Eldridge, 424 U.S.319(1976) test, which requires a consideration of the private interest that will be affected by the official action, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any of additional or substitute procedural safeguard – weighing the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. The record indicated that Stephanie participated in every aspect of the neglect proceedings, including the revocation hearing, filing motions, cross-examining witnesses, calling witnesses on her behalf, and making arguments to the court. It also noted that it was not apparent that permitting Stephanie's mother to testify or allowing Stephanie to introduce the testimony of Shanaira's aunt herself would have elicited any facts that were not already before the court. In addition, Stephanie's interest in the proceedings had diminished by the time the court ruled on the revocation of commitment motion due to the fact that her motions for guardianship and visitation had already been denied.

The court found that the trial court did not abuse its discretion in revoking the commitment despite its failure to make a finding that a cause for commitment no longer existed. Noting the sparse record on appeal, the court inferred from the neglect petition that the allegations of neglect concerned Shanaira's father, whom she was living with at the time the neglect petition was filed. In addition, the court "talked extensively" about the mother's fitness to care for Shanaira, which translated into a conclusion that there was no longer a cause for commitment.

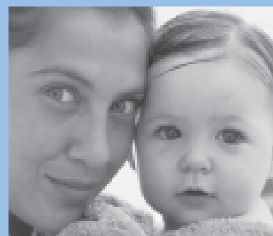
In a lengthy dissent, Justice Borden agreed with the majority's finding regarding Stephanie's standing to bring the appeal – but disagreed with the conclusion her due process rights were not violated. He agreed with the intervenor's contention that she was entitled to a proper evidentiary hearing pursuant to Conn. Gen. Stat. § 46b-129(m) and Practice Book 35a-14(c) and the hearing provided violated her due process rights.

The majority opinion may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP105/105AP111.pdf*

The dissent may be found at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP105/105AP111E.pdf*

Anthony A.

106 Conn. App. 389 (March, 2008)



Court affirms neglect finding. Although at time of removal respondent mother was psychiatrically committed and her baby was living with the maternal grandparents, court found that baby had no legal guardian and mother could be released at any time to claim her child.

In this interesting neglect appeal, the respondent mother argued that despite her significant psychiatric problems, her newborn son should not have been adjudicated neglected because at the time the neglect petition was filed the baby was living with the maternal grandparents.

The mother, who had a history of psychiatric issues, stopped taking medication for her psychiatric disorder when she discovered she was pregnant with her son. The night before his birth, the mother apparently suffered a psychotic episode and locked herself in a bathroom at her parents' home. She was violent and required restraint. She was taken to the hospital where she gave birth. A psychiatrist who evaluated her on March 1, 2006, the day of the child's birth, found she was not psychotic but recommended she resume medication. The respondent refused. On March 3, 2006, an investigative social worker from DCF visited the mother in the hospital and worked with the child's grandmother, a DCF employee, to develop a care plan for mother and child which relied on supervision of both by mother's parents. Mother reportedly refused the plan. A psychiatrist evaluating the respondent mother the same day found she was psychotic and issued an emergency commitment order hospitalizing mother for up to 15 days. The child was taken into DCF custody on a 96-hour hold. Ultimately, the trial court adjudicated the baby neglected by virtue of being denied proper care and attention.

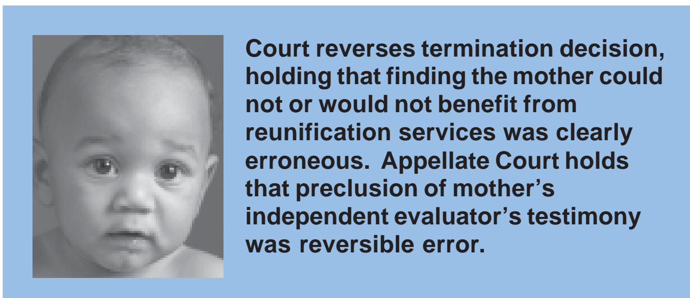
On appeal, mother argued that on March 3, 2006, the child was not neglected given that he was placed with his grandparents. The appellate court rejected this argument, upholding the trial court's conclusion that the grandparents could neither prevent nor control the mother's psychotic episodes, and there was nothing to stop the mother from returning to their home when her emergency psychiatric

commitment expired. DCF, therefore had a legitimate concern for the child's safety. The appellate court further noted that both respondent and the child's father were institutionalized on the date in question (father was incarcerated) and therefore there was no one with legal authority to care for the child.

This case raises questions about informal relative care arrangements used in many families. The appellate court appears to reject the argument that a true arrangement for care of the child existed, noting that mother had not agreed to the plan. However, the court's unwillingness to credit the arrangement is interesting, given that DCF, through its investigative social worker, had endorsed supervision by the child's grandparents in the care plan it developed the same day as the 96-hour hold was invoked. Another important aspect of the decision is the discussion of the possibility for harm if the respondent mother were released from the hospital. This looks somewhat like the accepted doctrine of predictive neglect, but is interesting in that it relies on a series of assumptions: that mother would be released, that she would go to her parents' home and take her child; that even after psychiatric treatment, she would not permit her own parents to supervise care of her child as DCF had previously endorsed.

Jorden R.

Conn App. (April 15, 2008)



Court reverses termination decision, holding that finding the mother could not or would not benefit from reunification services was clearly erroneous. Appellate Court holds that preclusion of mother's independent evaluator's testimony was reversible error.

In this unusual case, the Appellate Court reversed a termination of parental rights decision on the grounds that the trial court's determination that the mother was unable or unwilling to benefit from reunification services was clearly erroneous.

This case began after infant Jorden suffered severe and inexplicable injuries while in the care of his parents. DCF moved to terminate parental rights shortly after the child's initial removal on the ground that the child was harmed as a result of the parents' acts of "commission or omission." DCF successfully alleged that the parents were unable to benefit from services, thus relieving the department of its statutory obligation to provide rehabilitation and reunification services. On appeal, the respondent mother challenged both findings.

The Appellate Court affirmed the "omission/commission" ground for termination, reasoning that because the child suffered injuries in the care of his parents for which no adequate explanation was offered, there was sufficient evidence to support the trial court's conclusion.

However, the Appellate Court found that the trial court erroneously found that the mother was unable or unwilling to benefit from reunification services. At trial, DCF contended that it did not have to provide reunification services given the nature and severity of the child's injuries. However, the trial court did not address whether the Department was statutorily obligated to provide reunification services. Instead, the court analyzed whether or not respondent mother had cooperated and benefited from services and whether she could reasonably put herself in a position to be an appropriate parent. The appellate court then reviewed the trial court's findings in that regard.

The appellate court noted that the trial court found the respondent "facially complied" with the specific steps ordered for her. Additionally, although there was evidence that the mother briefly renewed her relationship with the physically abusive father, the record also demonstrated that the mother quickly terminated that relationship, continued with appropriate counseling and sought a restraining order against the father. Interestingly, the trial court also accepted testimony that the mother sought out additional counseling after the termination petition had been filed.

The appellate court determined that the trial court's factual finding that the mother could not or would not benefit from these services was clearly erroneous given ample evidence in the record of the mother's efforts and progress with services and visitation. The appellate court also pointedly noted the trial court's emphasis on the mother's youth and immaturity. The appellate court observed that "[t]his circumstance is not as uncommon as one might wish it were in today's society." The appellate court held that the mother's youth and immaturity were dynamic characteristics that would continue to improve over time. The court concluded that "[it may well be the fact that the department might be able to choose more effective parents than those to whom many children have been born. …[However, as the] Supreme Court has noted, '[a] parent cannot be displaced [simply] because someone else could do a better job of raising the child . . . .''. The appellate court held that absent any suggestion the respondent caused the child's injuries, she was entitled to reasonable reunification efforts. It is unclear whether the appellate court was ruling that the trial court's finding in this regard was erroneous because the mother had made some progress towards services or because she was not the perpetrator of the child's injuries and therefore DCF was not entitled to a finding that reunification efforts were not required.

On a separate issue, the appellate court, citing *In re David W.*, 254 Conn. 676 (2000), held it was an abuse of discretion for the trial court to preclude testimony from the respondent's independent expert because the expert had viewed a report prepared by the court-appointed evaluator who relied on a confidential interview with the father. The appellate court held that the trial court could have used an alternate remedy for the violation of the father's privacy rights. Instead, the trial court excluded relevant and highly important information. Therefore, the decision to preclude the testimony and report of the independent evaluator constituted harmful error.

2008 LEGISLATIVE UPDATE

STATE BUDGET LEAVES MANY PROPOSALS UNREALIZED

Sarah Healy Eagan, Esq.

As many state capitol watchers are already aware, the end of the legislative session was dramatically anti-climactic. The state's estimated budget surplus evaporated between January andMay, leaving hundreds of legislative proposals unrealized.

There were, however, some bills that survived the session and passed both houses of the legislature. These bills include:

Public Act 08-41
An Act Concerning Youth Who Run Away
Effective October 1, 2008

This bill provides that until January 1, 2010, a judge may order a 16 or 17 year old runaway who has been adjudicated as being a "youth in crisis" to submit to the control of their parents, guardians, foster parents or other custodians for a period of time the court specifies. The order cannot override any other law or extend beyond the youth's 18th birthday. As with other court orders directed at youth in crisis, violations are not delinquent acts and cannot subject the youth to detention or imprisonment.

Public Act 08-86
An Act Concerning Families With Service Needs
Effective October 1, 2008

This bill makes a number of changes in the laws governing families with service needs (FWSN) children. These are children under age 16 (or, beginning January 1, 2010, under age 18) who have run away without good cause, are truant or beyond control of their parents or school authorities, or are engaged in certain forms of sexual or immoral conduct.

The law authorizes juvenile court judges to place FWSN children under the supervision of a juvenile probation officer or commit them to the Department of Children and Families (DCF) and to issue orders setting conditions they must meet. The bill:

1. Makes information obtained about potential FWSN children receiving diversionary mental health services confidential and limits how such information can be used;

2. Specifies that judges can modify or enlarge a FWSN child's conditions of supervision, conforming law to existing practice;

3. Provides that motions alleging that a FWSN child (a) has violated a court order or (b) is in imminent risk and needs to be placed in a staff-secure facility must be served on parties in the same manner as authorized for serving FWSN petitions;

4. Sets clear and convincing evidence as the standard that judges must use to determine whether a FWSN child has (a) violated a court order or (b) should be committed to DCF after release from a staff-secure facility. The bill provides that FWSN children cannot be committed to DCF after a staff-secure facility placement unless the court holds a hearing and finds, by clear and convincing evidence, that:

> a. the child is in imminent risk of physical harm from the child's surroundings;
>
> b.as a result, the child's safety is endangered and removal from these surroundings are necessary to ensure the child's safety; and
>
> c.commitment to DCF is the least restrictive alternative available.

The Act also specifies that staff-secure placement is only an option for FWSN children currently under orders of supervision of DCF commitment. It eliminates use of these procedures when a child has been adjudicated a FWSN child but the court ordered a different disposition, such as being sent home with a warning or receiving mental health or substance abuse treatment through DCF's voluntary services program; and,

5. Consistent with federal law, the Act requires DCF to develop permanency plans for FWSN children committed to its care, with yearly court reviews.

Public Act 08-5
An Act Concerning the Teaching of Children with Autism and Other Developmental Disabilities
Effective from passage

The act requires the Commissioners of Education and Developmental Services, and the Chancellor of the Connecticut State University System to define autism and developmental disabilities, and to define a state-wide plan to incorporate methods of teaching children with autism and developmental disabilities into programs, requirements, and training. The act also requires that while developing recommendations related to programs, requirements, and training, the Commissioners of Education and Developmental Services, and the Chancellor of CSUS must take into consideration a set of issues (defined by the act) related to children with autism and developmental disabilities.

Many Important Proposals Not Passed

Unfortunately, the state's worsening fiscal climate resulted in the demise of many proposals submitted by child welfare advocates, including the promising educational stability bill (SB 159) sponsored by CCA, the Office of the Child Advocate and CT Voices for Children. Passage of the educational stability bill would have guaranteed foster youth who were placed out of their school district by DCF an opportunity to continue attending their schools of origin, so long as such continued attendance was in the youth's best interests. Under the provisions of the bill, DCF would be responsible for funding and facilitating transportation. The bill was supported by many advocates and heralded in public hearings by youth speakers who spoke to legislators about how important school stability was for them and how emotionally and academically devastating it can be to lose friends and teachers they have come to rely on.

The bill garnered the interest and attention of many key legislators and was passed unanimously by the Children's and Judiciary Committees. However, the bill required an additional allocation of funds for estimated school transportation costs and therefore could not pass without a new budget bill for the 2008 fiscal year. CCA is confident that advocates can build on the bill's early appeal and ensure passage of the initiative in next year's legislative session.

Other bills that did not pass this session include the following:

1. a bill designed to assist relatives who want to intervene in child protection cases;

2. a bill implementing the recommendations of the Program Review and Investigations Committee concerning accountability and improvement measures for DCF;

3. a bill, sponsored by the Child Protection Commission, which would have ended the system of dual representation for youth in child protection proceedings by ensuring that children 7 years old and older are appointed an attorney to represent them rather than an attorney/guardian *ad litem*;

4. a bill that would have required DCF to report on outcomes for youth who are transitioned from DCF custody to the DMHAS Young Adult Services Program.

Additional legislative information is available at www.kidscounsel.org/legislative.htm

CCA TO RELEASE NEW PUBLICATION ON SCHOOL RE-ENTRY RIGHTS OF JUVENILE JUSTICE YOUTH

Emily Breon, Esq.

CCA'S new publication on the educational rights of juvenile justice-involved youth who re-enter school after leaving residential facilities or the Connecticut Juvenile Training School (CJTS) will be available this fall.

The new publication will address issues including enrollment, transfer of records, special education, and the impediments to re-enrollment that youth frequently face upon their return to school:

Enrollment
Students re-entering school from residential facilities or CJTS should be able to enroll in school immediately.

Records Transfer
Schools do not need parent or guardian permission to retrieve education records from detention, CJTS or any other residential placement.

Confidentiality
Many of our clients want to know what information schools have regarding their charges. Students never have to share their charges with school staff, even if asked.

Push Out
Students have complained that schools will tell them that they need to withdraw and enroll in adult education because they are too old to be in high school.

Services for Special Education Students
When special education students are discharged from CJTS or a residential placement, schools should not wait to provide services to these students until a Planning and Placement Team (PPT) meeting occurs.

Records Erasure
Any child who has been found delinquent or a member of a family with service needs, and is no longer under court supervision or in the custody of DCF, may file a petition with the Superior Court to erase all police and court records.

Detailed information on the above and other issues that affect youth re-entering the education system will be covered in the new publication.

The book will be available through CCA's website at *www.kidscounsel.org/publications*.

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