KidsCounsel®
a newsletter for attorneys representing children in Connecticut

Summer 2007

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U.S. Department of Education proceeding with Complaint Filed against Hartford Public Schools

Center for Children's Advocacy Files Complaint on behalf of Hartford English Language Learners

Emily Breon, Esq., MSW
Equal Justice Works Fellow, Center for Children's Advocacy

The U.S. Department of Education's Office for Civil Rights (OCR) has agreed to proceed with the Center for Children's Advocacy's complaint regarding the education of English Language Learners in Hartford Public Schools. English Language Learners, commonly referred to as ELLs, are those children whose native language is not English. CCA filed a complaint in April with OCR on behalf of Somali-Bantu, Liberian, and Spanish-speaking students and their parents, although CCA anticipates that OCR's involvement will benefit all English Language Learners in the District.

English Language Learners in Hartford

Somali-Bantu and Liberian refugees face a number of unique challenges to acclimating to life in the United States, including its educational system. Many of the refugee students come from refugee camps where they have not had formal education. In recent years, the District operated a New Arrival center at Bulkeley High School where students received intensive educational services in a small group setting with other refugees for a limited period of time. The center was disbanded by the fall of 2005, and the New Arrivals returned to their district schools. New Arrival students are now placed in classes with their same age peers, and teachers are expected to "scaffold" the curriculum to the New Arrivals' level when teaching them. This has proven to be difficult for both student and teacher. For example, since algebra is the lowest level math class offered at the high school level, teachers must introduce numeracy to New Arrival students who have had no previous exposure to mathematics while also teaching algebra to their classmates.

Hartford has other newly arrived refugee students who face similar challenges. Other refugee students in the District include the Meshketian Turks, Burmese Karens, Cubans, Afghans and Vietnamese. Catholic Charities Migration and Refugee Services expects 1972 Burundi refugees from Tanzania (named as such because they have lived in refugee camps since 1972) to arrive in Hartford this summer, and these children will subsequently enroll in school.

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Dept. of Ed. OCR Complaint

Educational Rights of ELL Students

ELLs in Hartford can roughly be divided into two groups – those who are eligible to participate in a bilingual program and those who are not. A bilingual education program includes instruction in both English and a student's native language, for no more than thirty months. Pursuant to state law, a District must provide a bilingual education program in a school only if twenty or more students in that school require it. Spanish-speaking ELLs meet this threshold, and thus the District offers a bilingual education program in its schools to these students. The Somali-Bantu and Liberian students referenced in the complaint do not have the requisite number of students in any one school to trigger the creation of a bilingual education program. Teachers teach these students in English, using teaching methodologies designed to present material to the students in a manner that they can understand even if it is not in their native language.

Both types of ELLs – those who have a bilingual education program available to them and those who do not – have the same right to effectively access the school's curriculum, pursuant to both state and federal law. "Each child shall have…equal opportunity to receive a suitable program of educational experiences," according to Section 10-4a of the Connecticut General Statutes, which the State Department of Education has interpreted to include an opportunity to develop proficiency and literacy in English and exposure to content areas in English in a form that these students can understand. The other legal basis for providing ELLs such a program is found in Title VI of the 1964 Civil Rights Act which the courts and OCR memoranda have interpreted to mean that schools must provide any alternative language programs necessary to ensure that ELLs have "meaningful access to the schools' programs."

CCA's OCR Complaint

CCA's OCR complaint alleges that the District has violated the civil rights of ELL students and their parents by denying them equal access to, and equal treatment within, the District's educational program, in violation of Title VI.

In its Complaint to OCR, CCA alleges that Hartford Public Schools has violated the civil rights of ELLs and their parents in the following ways:

• The District has not developed or implemented an adequate system of communication with non-English speaking parents.

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U.S. Dept. of Ed. OCR Proceeding with Complaint Filed by CCA

• The District has failed to adequately identify students who have been in this country for less than three years, i.e., New Arrivals, for special education services.

• The District's New Arrival students who have not previously attended school cannot access the curriculum because they are placed in classes (with their same-age peers) that do not teach content to them in a manner that they understand.

• Bilingual students use outdated and/or inappropriate textbooks and, in some cases, do not have the appropriate classes available to them.

• Bilingual students have not been identified to receive support services, even though they are entitled to receive them, if they have not met English mastery criteria.

OCR Complaint Resolution Procedure

As with any complaint, OCR's role is to be a neutral fact-finder and to promptly resolve the complaint. Its goal is to resolve the complaint within 180 days, and most of OCR's complaints are resolved within that time period. OCR has a variety of options for resolving the complaint, including Early Complaint Resolution and Investigation. Early Complaint Resolution allows the parties an opportunity to resolve the complaint allegations quickly, prior to the commencement of an Investigation. If the complaint cannot be resolved through the Early Complaint Resolution process, OCR will commence an Investigation. This will include reviewing documentary evidence submitted by both parties, as well as conducting interviews with CCA, District personnel, and other witnesses. If OCR's Investigation identifies a violation of law, it will contact the District and seek a voluntary agreement to correct the problem. OCR will then monitor the District's agreed upon actions.

CCA's Advocacy on Behalf of ELLs

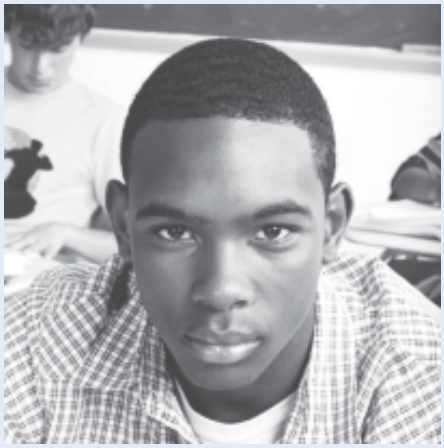
CCA first became aware of the educational struggles of newly arrived ELLs with its representation of a Liberian student in 1997. Since that time, CCA has been advocating for the rights of ELLs on both individual and systemic levels. The agency has represented individual students on education and non-education matters, such as benefits and immigration. On a systemic level, CCA has advocated for the implementation of academic year and summer school classes to support these students, and an increase in the number of tutors who speak the students' native languages so that they can better access the content of the curriculum.

CCA has also conducted trainings on education with members of different immigrant groups in Hartford. In December, CCA trained over thirty Somali-Bantu parents on their children's educational rights. Parents expressed, among other things, their frustrations regarding the District's lack of communication with them. While they strive to be an active part of their children's education, an inadequate system of communication, including a lack of translators, impedes their involvement.

This past year, CCA has been involved with the Hartford Refugee Resettlement Group, which is composed of advocates who work on behalf of the refugee community. This involvement has contributed much to CCA's advocacy on behalf of ELLs. Groups and individuals involved in the Hartford Refugee Resettlement Group include Jubilee House's Refugee Assistance Center, Catholic Charities Migration and Refugee Services, Hartford Areas Rally Together (HART), and Councilman Jim Boucher.

Hartford: An International City

Almost 8% of Hartford's student population is New Arrival students, meaning that they have lived in the United States for three years or less. These students come from 93 different countries. Approximately 43% of the New Arrival population is from the Caribbean; 23% is from Mexico, Central and South American; 16% is from Eastern Europe, and 11% is from Africa, 3% is from Central Asia; 2% from Western Europe, and 2% East Asia.



Legislature Approves Sweeping Changes to Status Offender Law

Diversionary System to Provide Screening and Assessment in Processing and Treatment of Status Offender Youth and Families

Martha Stone, Esq.,
Executive Director, Center for Children's Advocacy

Each year, there are approximately 3,600 youth who are referred to court as status offenders or Families with Service Needs (FWSN). These youth fall into the three categories of truants, runaways, or beyond control. Of these, approximately 300 FWSN youth are found to have violated a court order after their FWSN adjudication and have been placed in detention as a result.

Public Act 05-250, Effective October 1, 2007, Prohibits Incarceration of Status Offenders Who Have Not Committed a Crime

In 2005, the Connecticut General Assembly passed Public Act 05-250, effective October 1, 2007, which prohibits incarcerating status offenders (i.e., truants, youth beyond control) who have been non-compliant with court orders but have not committed any crime**.**

Public Act 06-188, Sec. 42, Effective July 1, 2006, Creates FWSN Advisory Board

In order to implement this significant change, the Connecticut General Assembly created The Families with Service Needs Advisory Board (Public Act 06-188, sec. 42), charged with making written recommendations to implement PA 05-250. The two co-Chairs appointed to this Board were Martha Stone, Executive Director of the Center for Children's Advocacy, and Preston Britner, Professor of Human Development and Family Studies at the University of Connecticut.

Public Act 07- 4 (SB 1500) Sec. 30-32;37, Effective July 1, 2007, Passes Sweeping Changes to Processing and Treatment of Status Offenders

A Subcommitee of the FWSN Advisory Board was created to draft legislation to revamp the status offender law. The legislature, as part of the 2007 implementer bill, adopted the legislative changes drafted by the FWSN Advisory Board, and passed sweeping legislation in the processing and treatment of status offenders. PA 07-4 (Senate Bill 1500), An Act Implementing the Provisions of the Budget Concerning General Government, is available on line at *www.cga.ct.gov* (enter Bill Number 1500 in Search Box. FWSN is sections 30-32; 37).

Summary of Major Changes

1. All FWSN cases will be initially screened before any petition can be filed in court. A diversionary system will be established at the front end, providing screening and assessment in order to determine appropriate services for children and families at the first point of contact. Probation officers will be the initial gatekeepers and will do the initial screening.

2. After screening, the probation officer will refer most of the FWSN referrals to community-based services.

3. Youth who have more complex needs and are considered high-end will be diverted to newly-created community-based Family Support Centers in the four major urban areas of Hartford, Bridgeport, New Haven, and Waterbury. These Support Centers will provide necessary services currently unavailable in the present constellation of services for the FWSN population including :

- Immediate crisis intervention
- Family mediation
- Educational evaluations and advocacy
- Community-based mental health treatment including gender-specific trauma treatment
- Resiliency skill building
- Access to pro-social activities

4. There will be access to respite centers for youth who need to live somewhere else for a cooling off period of two weeks or less. There will be two respite centers for girls, and one newly-created center for boys.

5. FWSN youth may be referred to court only after the service provider determines that the youth fails to benefit from services. If the youth is referred to court, the judge may suspend the formal court proceedings for up to 9 months and dismiss the FWSN petition if the matter has been satisfactorily resolved. The Court may also issue orders after an adjudication. If the youth violates a court order regulating his or her future conduct *and* the court finds that the youth poses an imminent safety risk to himself/herself or others and determines it is the least restrictive alternative, the court may place the youth in a staff-secure facility, only as a *last resort*.

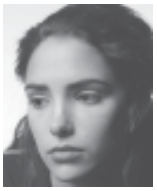
6. The law allows a child to be placed in a staff secure facility for up to 45 days if there a petition filed by probation officers that the child is at risk of "immediate physical harm from the child's surroundings or other circumstances," and that there is a judicial finding that the child is in imminent risk of physical harm, the child's safety is endangered and immediate removal is necessary, and there is no less restrictive alternative

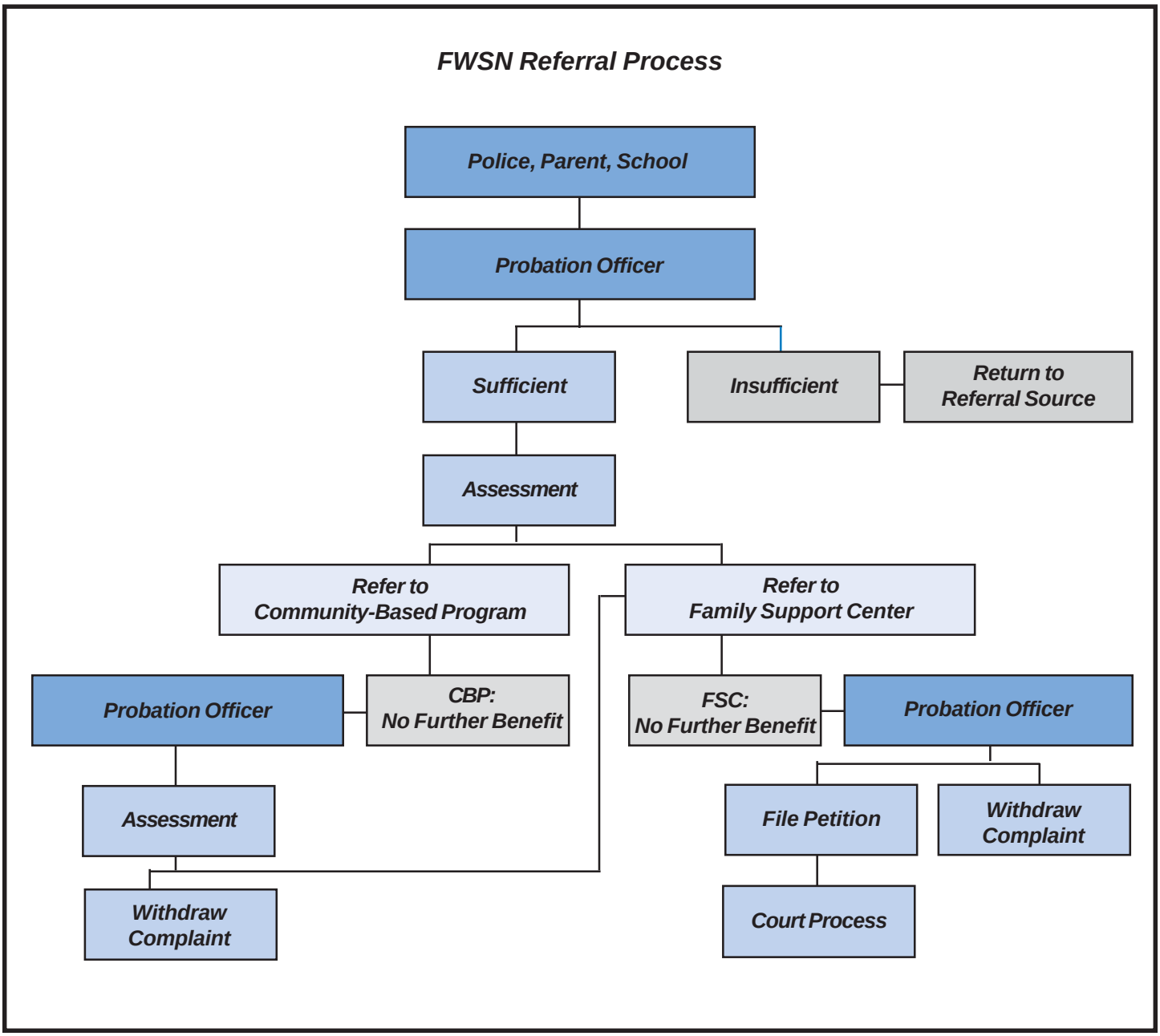
available. The alternative detention programs run by CSSD will be converted for this purpose.

The importance of this model is that it places prevention services at the front end, prior to court involvement. Status offenses are currently the gateway to juvenile justice involvement. According to Court Support Services Division (CSSD) figures, in 2005, 50% of status offenders became delinquent.

While this system is modeled after ones in New York and Florida, the legislature did provide for an independent evaluation to measure service quality and outcomes for children and families.

Please see the article on pages 6-7 of this publication for an update on legislation affecting child abuse, juvenile justice, education and healthcare.





UPDATE: 2007 Connecticut Legislative Session

Sarah Healy Eagan, Esq., Child Abuse Project
Center for Children's Advocacy

The end of the 2007 Legislative Session resulted in changes to Connecticut law in the fields of Child Welfare, Juvenile Justice, Education and Health Care. Highlights of the legislation are included below:

Child Welfare/Juvenile Justice

Public Act 07-174

An Act Expanding the Subsidized Guardianship Program to Siblings of Children Living with Relative Caregivers, and the Right of Foster Parents, Prospective Adoptive Parents and Relative Caregivers to be Heard in Certain Legal Proceedings

Effective October 1, 2007

This Act expands DCF's subsidized guardianship program for the benefit of siblings of children living with relative caregivers. It requires that courts permit foster parents, as well as prospective adoptive parents and relative caregivers, an opportunity to be heard when a hearing is scheduled concerning DCF's permanency plan or revoking DCF's commitment. The Act eliminates the requirement that the child have lived with the foster parent or relative caregiver for at least six months.

Public Act 07-8

Placement of Siblings of Children by the Department of Children and Families

Effective October 1, 2007

This Act changes the age for placement into special study foster homes from fourteen to ten. It allows placement of children with non-relatives if such children are siblings of other children placed in relative care.

Public Act 07-143

An Act Concerning Jessica's Law and Consensual Sexual Activity between Adolescents Close in Age to Each Other

Effective October 1, 2007

This Act amends Conn. Gen Stat section 53a-71 (Sexual assault in the 2nd degree), changing the age gap from 2 to 3 years.

The Act amends Conn. Gen Stat section 53a-73a (Sexual assault in the 4th degree): Under current law, anyone who has sexual contact with a person under age 15 is guilty of 4th-degree sexual assault. Under this Act, the actor is guilty of this crime only if he/she is more than (1) two years older than a victim under age 13, or (2) three years older than a victim between ages 13 and 15.

The Act creates an exception to Connecticut's hearsay rule for statements of young children about their sexual or physical assault by someone with authority over them. The exception applies if :

1. the court finds that the circumstances of the statement, including its timing and contents, provide particularized guarantees of its trustworthiness;

2. the statement was not made in preparation for a legal proceeding;

3. the proponent of the statement (a) tells the adverse party what the statement contains, including when, where, and to whom it was made and the circumstances that indicate its trustworthiness; (b) tells the adverse party that he/she intends to offer it as evidence; and (c) gives the adverse party fair opportunity to counter it; and

4. the child (a) testifies and is subject to cross-examination at the proceeding or (b) is unavailable as a witness and (i) there is independent non-testimonial corroborative evidence of the alleged act, and (ii) the statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

Public Act 07-4 (Budget Implementer)

Changes to Families with Service Needs Law (FWSN)

Effective October 1, 2007

This Act requires that probation officers conduct an initial assessment of the child and family and refer the child for appropriate community-based services or to a Family Support Center (newly created by statute). The probation officer may only file a complaint with the juvenile court after the community-based service provider reports that the child cannot benefit from services. The Act eliminates the ability of the complaining party to file a FWSN petition on his own within 30 days of receiving notice that the probation officer is not doing so. Please see article on pages 4-5 of this publication.

Public Act 07-4 (Budget Implementer)

Raising the Age for Juvenile Court Jurisdiction

Effective January 1, 2010

Beginning January 1, 2010, 16 and 17 year olds may have their charged offenses adjudicated in juvenile court. Juvenile cases involving serious felonies will still be automatically transferred to adult criminal court and prosecutors may still ask the juvenile court judge to transfer other cases to adult court.

The "Raise the Age" initiative will eliminate the "Youth In Crisis" program for 16 and 17 years olds charged with status offenses. Instead, these youth will be eligible for the Families With Service Needs program.

Education

Public Act 07-122

An Act Concerning Suspensions and Expulsions by Local and Regional Boards of Education

Effective October 1, 2007

This Act provides that the school administration may shorten the length of or waive a school suspension period for a student who is suspended for the first time or who has never been expelled. The student is eligible for this benefit if the student successfully completes an administration-specified program and meets any other conditions required by the administration.

Additionally, notice of that student's suspension will be expunged from the student's cumulative record by the board of education if (1) the student graduates from high school, or (2) the administration chooses, at the time the student completes the administration-specified program and meets any other conditions required by the administration.

Public Act 07-147

Restraints and Seclusion in Public Schools

Effective October 1, 2007

This Act places school districts under the same regulations for use of restraints and seclusion for special education students that conform with requirements for other state agencies. It requires schools to notify parents (1) about the laws and regulations governing the use of physical restraints and seclusion, and (2) when physical restraints have been used on their children.

Public Act 07-66

An Act Concerning In-School Suspensions

Effective October 1, 2007

This Act prohibits out-of-school suspensions and extends, from five to 10 days, the maximum length of in-school suspensions. A student can be suspended for (1) conduct that violates a publicized board policy or seriously disrupts the educational process or (2) conduct on school grounds or at a school sponsored activity that endangers persons or property.

The Act requires suspensions to be in-school unless the school administration determines that the student (1) poses a danger to persons or property, or (2) is disruptive of the educational process. Current law defines in-school suspension as exclusion from classroom activity, but not from school, for up to five consecutive days. The Act extends this to 10 consecutive days. Under existing law, an exclusion from school privileges for more than 10 days constitutes an expulsion.

The law allows students to be placed in in-school suspension up to 15 times or a total of 50 days in one school year, whichever results in fewer days. Students can be suspended out-of-school only 10 times or 50 days in one school year, whichever results in fewer days.

Healthcare

Public Act 07-2

An Act Implementing the Provisions of the Budget Concerning Human Services and Public Health

Effective July 1, 2007

This Act provides for the following:

- Increase in Medicaid reimbursements to physicians, dentists and other health care professionals. Medicaid will provide a fifty percent increase in the reimbursement rate for physicians (the first increase since 1989); hospitals will receive an additional $46 million in the first year and $72 million in fiscal year 2009;
- Expansion of the HUSKY health insurance program, including insurance coverage under the HUSKY A plan for parents with income up to 185% of the federal poverty level (up from 150%), and pregnant woman coverage up to $250% of FPL;
- Introduction of a pilot program of primary care case management (PCCM) for child/family Medicaid (HUSKY A).Under this system, the primary care provider (pediatrician, family medicine practitioner, etc.) is the care coordinator/case manager who arranges for specialty care when necessary, as opposed to the managed care organization, which presently designates these choices.

Truancy Court Prevention Project Concludes Successful Year

New Programming and Expanded Personnel Serve More Students

Emily Breon, Esq.,MSW, Equal Justice Works Fellow,
Truancy Court Prevention Project,
Center for Children's Advocacy

CCA's Truancy Court Prevention Project (TCPP) has concluded a successful year in Hartford Public Schools. The TCPP, which has been operating in Hartford since 2004, aims to divert truant students away from the juvenile justice system by delivering legal and case management services and advocating for the students' educational needs. The focal point of the TCPP is weekly informal court sessions held at school and presided over by judges who volunteer their time to monitor students' academic progress and attendance.

Partnerships with The Village for Families and Children, and the Capitol Region Education Council, and new funding opportunities, have enabled expansion of personnel and programming options for participants this year.

Graduation

A graduation ceremony was held on June 12, 2007 for TCPP participants. The program's judges were on hand to congratulate the students, and students received certificates and awards to commend them for their hard work and accomplishments.

New Programming

- **Expansion into Quirk Middle School**

Last September, the TCPP expanded to Quirk Middle School. Like the program at Hartford Public High School, 2 full-time case managers are based at Quirk during the day, and court is held at the school weekly.

- **Elementary School Program**

New funding secured by the Village for Families and Children, a lead collaborator in the TCPP, allows the project to now provide programming at Clark Elementary School and Burns Elementary School. At these schools, two prevention specialists conduct outreach to parents of children with multiple absences, recruiting them for the various support services offered by the Family Resource Center.

- **Employment Program**

A partnership with the Hartford Office of Youth Services allowed the TCPP to implement a twelve week paid internship program for students. For six weeks during the school year, students attended an after school program, created and executed by the TCPP's case managers, that provided students with basic job skills such as resume writing, telephone skills, and interviewing skills. As the school year ended, students were placed at supervised internships where they can put their newly acquired skills into practice.

New Personnel

- **Case Managers**

A generous grant provided by the Hartford Foundation for Public Giving enabled the TCPP to hire full-time case managers for the first time this year. The Village for Children and Families supervised these case managers.

- **Additional Judges**

In December 2006, the TCPP welcomed Superior Court Judge Curtissa Cofield to the program. Judge Cofield volunteers as the judge for Quirk Middle School. Her husband, Superior Court Judge Gary White, joined the TCPP team in May and volunteered as one of the judges at Hartford Public High School. Supreme Court Justice Richard Palmer and Appellate Court Judge Douglas Lavine continued their ongoing commitment to the TCPP by volunteering this year as well.

- **Project Director**

Beginning in June, the TCPP saw the addition of a new Project Director, Tia Alves. Ms. Alves has been a consultant with the Capitol Region Education Council (CREC), another partner in the TCPP, for several years. She is also a special education teacher and has extensive experience teaching students in alternative settings.

TCPP in the News

The TCPP has been featured in publications and continues to share its model and findings with local and national groups.

- On May 14, the TCPP was cited in a *Hartford Courant* article by Rachel Gottlieb, titled "The Truancy Epidemic." The article explained how the TCPP is making strides in fighting the truancy epidemic and included vignettes from the TCPP's court sessions.

- On May 16, CCA Attorney Emily Breon and student Kicker Ingles were among five panelists who spoke to the Hartford Foundation for Public Giving's Catalyst Group on "Truancy: A Family and Community Matter." Other panelists included Enid Rey, Director, Hartford Office of Youth Services; and

Truancy Court Prevention Project Concludes Successful Year

Clinton Lacey, Consulting Site Manager, W. Haywood Burns Institute and former director of the Youth Justice Program at the Vera Institute of Justice.

• The TCPP contributed an article on the judges' volunteer experiences with the TCPP for the American Bar Association's special issue on *Youth at Risk*, which will be published this summer.

• In October 2007, Dr. Andrea Spencer, Educational Consultant to the Center for Children's Advocacy; and Attorney Emily Breon, Director of the Center's Truancy Court Prevention Project, will present the TCPP model and its findings from the first two years of operation at the 19th Annual National Dropout Prevention Network Conference in Louisville, Kentucky.

For additional information on CCA's Truancy Court Prevention Project, please go to *www.kidscounsel.org* and click on "Publications" or "Programs & Projects."

TCPP: Success Stories and Letters from the Kids

"Now that I am on my way to improving, I realize how much I needed the program to help keep me on track. Knowing that I can get good grades and have success in school, I can stay motivated." – *Kicker Ingles*

Prior to his enrollment in theTCPP, Kicker had 23 full-day unexcused absences and 6 days of out-of-school suspension in the first six months of school. Once fully enrolled in March, Kicker missed only 3 days of school. In the last 6 weeks, Kicker did not miss a single full day of school.

Kicker came to the TCPP in the middle of the third marking period when he was failing most of classes. Once involved with the Project, his grades saw dramatic improvement: Science jumped from 55 to 100, World History from 55 to 70, and English from 55 to 80.

Kicker's success with the TCPP this year assures his academic promotion to10th grade.

Michael

My name is Michael Rivera and I am a Freshman at Hartford Public High School. I enrolled in the Truancy Court Prevention Project at the beginning of this school year because of my problems in 7th and 8th grade. The first person I met in the program, Fahad, came to my house and wanted to know if I was interested because of all my absences from Quirk Middle. He said it would help me with attendance and education-wise. My grandmother supported me in joining this program because she knew I would benefit from it.

When I first started going to Hartford High, I met with the judge at least once a month and that motivated me to come to school and do well in my classes. Emily (Breon) stuck with me and helped me through the whole program. The people who really cared and wanted to help me succeed made a big difference for me this year.

I always knew school was important, but I still didn't want to go. I needed to have a better year this year because I didn't want to repeat 9th grade. I got some of the best grades in some of the hardest classes I have ever taken. I know I can do well because I proved that to myself this year. – *Michael Rivera*

Ahjah

Since I started with the TCPP, I've improved in school and have bettered myself outside of school. My grades and attendance have improved a lot. I can be confident in the things I do such as my attitude.

Last year my grades were very poor and this year I tried hard to bring them up. With help from my case manager, Teresa Nieves, my grades have gone up a lot. I got A's and B's. Last year I had over 42 absences, but this year I had under ten. To some people that's still a lot but I think that is a big improvement.

Before TCPP, my confidence was really low and after I got in this program, it has gone up. I made new friends.

At the beginning, Emily Breon got me a spot in OPP (Our Piece of the Pie) and they showed me how to prepare for a job. The program I was in was called Echoes from the Streets. We had hands-on activities and learned tips and skills and how to be a part of a team.

This program did a lot for me and I am grateful to be in it. – *Ahjah Gamble*

Monthly Interdisiplinary Forums Address Complex Medical - Legal Issues

CCA's Medical-Legal Partnership Project and Connecticut Children's Medical Center Approach Complex Case Studies to Improve Outcomes for Children

Gladys Idelis Nieves, Esq.,
Medical-Legal Partnership Project
Center for Children's Advocacy

The Medical Legal Partnership Project, in partnership with the Connecticut Children's Medical Center, has established an excellent forum for discussion on important medical and legal issues, including, but not limited to, confidentiality, cultural competency, mental health, and self determination. This unique interdisciplinary approach allows for a great exchange of ideas between medical and legal professionals on how to best approach complex case studies, and serves as a great resource for both clinicians and lawyers.

A few examples of case studies presented to the Interdisciplinary Team include the study of a 22 month old male from Hartford, diagnosed with polycystic kidney disease, who was trach and vent dependent and in dire need of home nursing. Multiple attempts at securing home nursing for the boy were unsuccessful and the team discussed potential options that the child's parents could tap into to help secure a successful discharge. The team also discussed the parents' legal rights with respect to their child's care.

> "a forum where clinicians and lawyers come together to discuss viable solutions to very real, and very complicated, case studies"

Another case revolved around a child's mental health and educational placement. A thirteen year old male, diagnosed with severe cognitive delays, was exhibiting violent behaviors within his classroom. At the time of the meeting, the teen and his family were not receiving or aware of any resources from governmental agencies, and there were questions with respect to his full inclusion classroom setting. The Interdisciplinary Team discussed what further evaluations the teen should have, disputed the appropriateness of his educational placement, and discussed services available to assist the family within the community.

One case presented to the Interdisciplinary Team goes to the essential essence of a forum where clinicians and lawyers can come together and discuss viable solutions to very real, and very complicated, case studies. This case questioned a sixteen year old girl's ability to make medical decisions on her own. She had engaged in sexual intercourse and needed a surgical procedure to repair a vaginal laceration. The teen had engaged in a cultural marriage ceremony with her 21 year old partner, without her parent's consent. Is she legally married? Can she have her vaginal tear repaired without informing her parents? What rights, if any, does her 21 year old partner have? The policies and procedures that should be followed to ensure that the child's rights – or the parent's rights – are not violated are complex, and the forum established by the Interdisciplinary Team Meeting is a great venue to address these issues accordingly.

CCA's Medical Legal Partnership Project, along with the Connecticut Children's Medical Center, has started what many believe is a great precedent in bringing professionals from both the medical and legal communities together to help resolve very complex problems.

Interdisciplinary Team Meetings are held at the Connecticut Children's Medical Center at 12:00 noon, on the second Thursday of every month,.

For more information, please contact
Gladys Nieves: 860-545-8581 *(gnieves@ccmckids.org)* or
Jay Sicklick: 860-714-1412 *(jsicklick@kidscounsel.org).*

Important Case Summaries

Sarah Healy Eagan, Esq.
Child Abuse Project, Center for Children's Advocacy

Special Education

Winkelman v. Parma City School District

U.S. Supreme Court
(No. 05-983) May 21, 2007

In a surprising reversal of a 6th Circuit decision, the United States' Supreme Court held that parents may bring a pro se court action regarding any procedural or substantive claim arising under the Individuals with Disabilities Education Act (IDEA.) The Court rejected the view of some circuit courts that, under the statute, parents are "guardians" of their children's right to an appropriate education, rather than "real parties in interest" themselves.

In this case, the parents of an autistic child claimed that the school district denied their child a free and appropriate public education and sought reimbursement for private school expenses. After losing their administrative complaints, the parents, without the assistance of a lawyer, sought review in the federal district court. The court dismissed their claims on the pleadings. On appeal, the Sixth Circuit Court also dismissed the parents' case, holding that parents may not bring suits on their own or their children's behalf without the assistance of counsel. Such suits violated the long-standing common law rule that parents may not legally represent the interests of their minor children.

The Supreme Court disagreed with the Circuit Court. Looking to the language and legislative framework of the statute, the Court noted that multiple provisions of IDEA indicate that parents are the co-owners of their child's right to an appropriate education. The Court paid special attention to the sections of IDEA which provide that the *parent* may recover the costs of a private school education and, the court may award attorneys fees to a prevailing party "who is the *parent* of a child with a disability." 1412(a)(10)(C)(ii); §1415(i)(3)(B)(i)(I) (emphasis added.) These provisions clearly endow the parents with substantive rights, for which the parents may seek redress in the courts.

Furthermore, the Court held that it would be inconsistent to interpret the statute as providing parents the right to pursue administrative remedies but not court remedies. The Court cited as examples § 1415(b)(8) (requiring a state educational agency to develop a model form to assist parents in filing a complaint); §1415(c)(2) (addressing the response an agency must provide to a parent's due process complaint notice); and §1415(i)(3)(B)(i) (referring to the parent's complaint).

Additionally, the Court noted that IDEA defines one of its purposes as seeking"to ensure that the rights of children with disabilities *and parents* of such children are protected." §1400(d)(1)(B) (emphasis added.)

The Court also rejected the argument of certain circuit courts that parents may have standing to litigate only particular claims, such as procedural violations or reimbursement requests. The Court reasoned that the statute keeps parents in a central role, requiring schools to include parents in the *substantive* creation of the IEP and permitting parents to bring any due process claim related to the education of their child. The Court stated that "[w]ithout question a parent of a child with a disability has a particular and personalinterest in fulfilling our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities."

The Court concluded that the provisions of IDEA, through both text and structure, create in parents an "independent stake not only in the procedures and costs implicated by this process but also in the substantive decisions to be made."

Finally, the Court rejected the school district's argument that the statute does not adequate put states on notice of additional costs they may incur as a result of parents' pro-se litigation of educational claims. The school district cited Supreme Court precedent holding that pursuant to the Spending Clause, "when Congress attaches conditions to a State's acceptance of federal funds, . . the conditions must be set out unambiguously." *Arlington Central School Dist. Bd. of Ed.*v. *Murphy*, 126 S. Ct. 2455 (2006). The Court dismissed this argument, holding that the determination that IDEA grants parents independent, enforceable rights does not impose any substantive condition or obligation on states that they would not otherwise be required by law to observe. The ancillary effect of potentially increasing states' litigation costs (defending suits brought by parents alone) did not qualify as a "spending clause" concern.

Mr. M. ex rel K.M. v. Ridgefield Bd. Of Educ.

2007 WL 987483
(D. Conn.) March 30, 2007

This special education decision serves as a warning to school districts regarding the consequences of failing to include parents in the IEP process. In this case, the parents sought reimbursement for private school placement on the ground that the school district denied their daughter an appropriate education and denied the parents the right to participate meaningfully in the IEP process. The hearing officer did in

fact find that the district violated certain IDEA procedures—*inter alia* failing to hold a timely annual review at the end of first grade and failing to include the parents in the final second grade IEP meeting, during which the school rejected the parents' previous request for a private placement. However, the hearing officer found that despite the procedural violations, the child was not denied FAPE during either school year and she was making some educational progress. Accordingly, the hearing officer determined that the parents were *not* entitled to reimbursement for the private school placement.

The district court reversed the hearing officer's determination in part and held that the procedural violations during the second grade school year deprived the child FAPE. The court zeroed in on the fact that the district improperly held an IEP meeting without the parents.(The school and the parents could not agree on a date for the IEP meeting after the parents indicated they wanted to bring their attorney.) The court held that a school may not proceed with an IEP meeting absent the parent unless the school had been "unable to convince the parents that they should attend," and the school could produce "a record of its attempts to arrange a mutually agreed on time and place, such as . . telephone calls . . correspondence . . and . . visits made to the parent's home or place of employment." *See* 34 C.F.R. § 300.322(d)(2006); 64 C.F.R. 12587 (1999).

The school district argued that the parent's absence did not deny the child FAPE because the parents' lack of participation did not result in the child losing an educational opportunity. The court rejected the district's argument, reasoning that the Supreme Court has repeatedly held that parents must have the ability to participate in the educational decision-making process. The court also reasoned that the majority of federal circuit courts have held that "substantive harm occurs when the procedural violations in question *seriously infringe upon the parents' opportunity to participate in the IEP process.*" *See Knable v. Bexley City Sch. Dist.*, 238 F.3d 755 (6th Cir. 2001); *Adam J. ex rel Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003); *C.M. v. Bd. Of Educ.*, 128 Fed. Appx. 876 (3d Cir. 2005); *M.L. v. Fed. Way Sch. Dist.*, 394 F.3d 634 (9th Cir. 2005); *Blackmon v. Springfield Sch. Dist.*, 198 F.3d 648 (8th Cir. 1999).

M.K. ex rel Mrs. K. v. Sergi
2007 WL 988621
(D.Conn.) March 30, 2007.

In a procedurally complicated case the parents of a psychiatrically disabled teenager, and the prevailing party in a due process hearing, sued, among other defendants, the former Commissioner of the State Department of Education (SDOE) for violations of IDEA. Specifically, the parents alleged that the SDOE failed to put in place a hearing process that would enable hearing officers to enter orders against state agencies, such as DCF, which provide services that might impact the provision of FAPE. The former SDOE Commissioner, Theodore Sergi, moved to dismiss on the grounds that he was not a proper party to the complaint and moved, in the alternative, for summary judgment claiming that even if he was a proper party, the state had complied with its obligations under state and federal law.

The plaintiffs' teenage son received numerous mental health services from DCF that arguably qualified as "related" services under IDEA. As the teen aged out of the DCF voluntary services program, his parents wanted to ensure that he was appropriately supported and transitioned and requested that the hearing officer enter orders against both the school district (LEA) and DCF. The hearing officer acknowledged that "significant problems existed in the coordination of special education services provided by [the LEA] and DCF," but the officer determined that he had limited jurisdiction over DCF and could not issue the necessary orders. Accordingly, the parents alleged that SDOE failed to fulfill its oversight obligations of ensuring that hearing officers have authority to issue appropriate relief, including the ability to join DCF as a party to due process hearings in cases where both an LEA and DCF provide services necessary to FAPE.

The court held that the SDOE commissioner was a proper party to a systemic procedural complaint. Moreover, the court acknowledged that from a practical standpoint, the plaintiffs' arguments made sense and that the principles of efficiency would be well served if the hearing officer could assert jurisdiction over any and all state or local agencies that provide services impacting a disabled student's ability to receive FAPE. However, the court held that state and federal law do not give the hearing officer such authority. The hearing officer has jurisdiction over a state agency only where the agency is acting as the LEA. The inter-agency agreement between SDOE and DCF indicates that DCF acts as the LEA when a child resides in a DCF facility and his needs require that his educational program be provided within the facility. Under

those circumstances, U.S. District # 2 is responsible for the cost of educational services provided within the facility.

Additionally, the court held that Congress intended to ensure that the LEA has ultimate responsibility for the provision of services necessary to receive FAPE, even if the LEA contracts with or seeks reimbursement from a state agency for the provision of those services. 20 U.S.C. § 1412(a)(12); *see also* Conn. Gen. Stat. § 10-76b (providing that the LEA shall be responsible for cooperating and consulting with other state agencies to ensure that children under its jurisdiction receive FAPE.) Consequently, because the buck stops with the LEA, the LEA is the proper subject of an IDEA based complaint, not the state agency.

Accordingly, the court held that (1) even if services being provided by a state agency are considered "related services" that does not render the state agency liable as an LEA under IDEA; (2) a plaintiff who believes his related services are deficient should pursue remedies against the LEA, not the state agency providing those services; (3) even if DCF or another state agency has statutory responsibility to provide mental health services to a child, DCF is not necessarily liable under IDEA; and (4) the fact that a state agency arranged for services that impacted a child's educational performance does not necessarily result in legal liability under IDEA. *See also Naugatuck Bd. Of Educ. V. Mrs. D.*, 10 F. Supp.2d 170, 179 (D. Conn. 1998) (Nevas, D.J.); *Mrs. B. v. Milford Board of Educ.*, 103 F.3d 1114 (2d Cir. 1997).

The court concluded that because the LEA has final responsibility for the provision of educational services (except as provided for in the interagency agreement between DOE and DCF), the State DOE did not violate its obligations under IDEA in failing to provide a mechanism for state hearing officers to join state agencies to actions brought against the LEA. Summary judgment in favor of SDOE was granted.

Child Protection

In re Davonta V.

98 Conn.App. 42, *cert granted*, 280 Conn. 947, 912 A.2d 480 (Conn. Dec 06, 2006) (No. 17788)

The Supreme Court granted certification for appeal in this case, limited to the following issue:

"Did the Appellate Court improperly conclude that the trial court correctly applied the appropriate standard of review in this termination of parental rights case?"

In *In re Davonta V.*, the Appellate Court affirmed the trial court's decision to terminate a mother's parental rights on the grounds that the mother failed to achieve a reasonable degree of rehabilitation and termination of parental rights was in the child's best interest. Though the mother did not contest the court's adjudicatory findings, she argued that the trial court erroneously found that termination was in the best interests of her child. She reasoned that the court did not afford adequate weight to the child's ongoing ties to his biological family and there was no adoption plan in place for the child, then fourteen years old.

The Appellate Court rejected the mother's contention that the trial court must weigh the child's ties to his biological family more heavily than other factors that relate to the best interest analysis, namely permanency and closure. The Appellate Court also determined that it was not error for the trial court to reject the opinion of the Guardian ad Litem in favor of the opinions of other witnesses. Finally, it was not error for the trial court to determine that termination was in the best interests of the child despite the fact that the foster parents were not committed to adoption. The trial court could reasonably have concluded that the more important factor was that the child was *freed* for adoption.

In a dissenting opinion, Judge Schaller contended that the trial court did not find by clear and convincing evidence that termination was in the child's best interest. Judge Schaller reasoned that the termination petition punished the parent and child and that termination could not possibly be in the child's best interest if it left him without a permanent relationship with anyone. The child adamantly wanted to maintain relationships with his siblings and other maternal relatives. The dissent reasoned that the child was not "liberated" by the termination proceeding and that the "concepts of 'closure' and 'move on' [had] little relevance to [his future]."

(continued on page 14)

Important Case Summaries

In re Jeremy M.
100 Conn. App. 436, 918 A.2d 944 (April 2007)

In this juvenile delinquency appeal, the petitioner, a 13 year old boy, claimed that his constitutional rights were violated when the court appointed a guardian *ad litem* against the express wishes of himself and his father. The youth also claimed that the trial court erred when it failed to properly instruct the guardian *ad litem* as to her duties in the case.

Because these claims had not been raised at trial, the appellant sought to have the claims reviewed under the *Golding* standard. Accordingly, as a threshold matter the appellate court needed to determine whether the claims were of a "constitutional magnitude." The appellate court rejected the youth's argument that the appointment of a guardian *ad litem* violated his constitutional rights because although his father enjoys a constitutional right to act as a parent, the youth failed to cite any case law holding that the child has a constitutional right in having his parent act as his guardian in delinquency proceedings, and the child did not have standing to raise the constitutional rights of his father on appeal. Accordingly, the court declined to review this claim on the merits.

The court also rejected the argument that the guardian *ad litem* was not instructed as to her role, as required by *Tayquon H.*, 76 Conn. App. 693 (2003), because the appointment form sufficiently spells out the duties and obligations of the guardian *ad litem*.

In re Brittany J.
100 Conn.App. 329, 917 A.2d 1024 (April 2007)

In this relatively straightforward termination of parental rights appeal, the appellate court affirmed the trial court's findings that the mother had failed to rehabilitate and that termination of parental rights was in the children's best interests.

The mother, who suffered from bipolar disorder, contended that she had indeed rehabilitated to an extent where she could successfully parent her children. She claimed that she was taking her psychotropic medication and had made significant improvement with therapy. Indeed, the mother's clinician opined that the mother was "committed to improving her mental health." However, the appellate court ruled that the court was permitted to give greater weight to the testimony of the court-appointed psychologist who, as late as July, 2005, reported that the mother "*utterly refused* to comply with her medical regimen." The trial court was permitted to find that the mother's recent efforts were "too little, too late."

The appellate court also upheld the trial court's finding that termination was in the best interests of the children, who, though bonded with their mother, expressed some desire to continue in their foster homes rather than return home. The trial court concluded that the children's need for permanency, combined with the mother's intermittent and inadequate efforts to improve her mental health, militated in favor of terminating parental rights.

This case underscores the need for parents to demonstrate progress with their court-identified parenting issues before too much time passes. Progress that is made after the filing of the TPR petition may not be credited or given much weight by the court.

CCA Works to Preserve Teens' Access to Reproductive Health Care

Testimony Supports Teens' Access to Abortion without Parental Notification

On April 27, 2007 the Legislature's Select Committee on Children held a forum for invited guests to speak about teens' access to abortion in Connecticut. The Director of the Center's Teen Legal Advocacy Clinic, Stacey Violante Cote, was a featured speaker.

Testimony addressed the legislature's concern that Connecticut law requires teens to get parental permission for body piercing or a tattoo[1], but allows them to get an abortion without parental consent or notification. The Center urged the Committee to differentiate between laws regarding body piercing, or tattooing, and laws regarding federally protected constitutional principles on abortion stating, "They are not comparable legally or practically. Legally, there is constitutional authority granting teens confidentiality and autonomy over reproductive health care decisions.[2] Practically, the consequences of an abusive parent's reaction to an unplanned pregnancy are far more serious than that for a body piercing or a tattoo. Furthermore, to require parental consent for body piercing or a tattoo, and thus possibly delay such procedure, does not put a teen in danger. To require parental notification or consent for an abortion would invariably cause a teen to delay the decision. This delay would put her in danger as she might pursue a later term abortion, and/or pursue dangerous means by which to end her pregnancy. Even if she were to take the pregnancy to term, she should not delay that decision and appropriate prenatal care."

The Center's testimony offered a view on the potentially negative effect of parental consent or notification laws on low-income teens' access to sensitive healthcare. This was exemplified by the case of Amanda*, a pregnant 17 year old. Amanda's mother is deceased, and her father is incarcerated.

Amanda is living with a friend, and the friend's parent, in a delicate living arrangement: she pays some money toward rent, and, in return, has a safe place to live. Amanda's goal is to keep this living arrangement until she graduates from high school and starts college. Her situation is not uncommon.

If the law were to require Amanda to get consent, or even notify, her incarcerated father about her pregnancy, at the very least it would delay Amanda's access to an abortion, increasing the physical risks of the procedure with each week of delay. At worst, she might pursue dangerous means by which to end her pregnancy. Parental notification and consent laws are barriers to a teen's access to safe and appropriate healthcare, making it less likely that she would receive appropriate help.

The Center's presentation highlighted the ways in which the current law works to protect teens' access to abortion and encourage parental involvement where possible (Conn. Gen. Stat. § 19a-601 *Information and counseling for minors required. Medical emergency exception*).

CCA testimony pointed out that the current law requires trained counselors to discuss with a minor the involvement of her parent(s), guardian or other adult family member in decision-making:

"This carefully crafted law was an intentional choice made by the legislature in interpreting federal constitutional protections for teens' access to reproductive healthcare. It works in concert with many other laws painstakingly enacted by this legislature. Included in this statutory scheme are laws protecting a teen's right to testing and treatment for sexually transmitted diseases, HIV testing, substance abuse counseling, outpatient mental health counseling, and family planning. Together, this body of law works to protect teens while still fostering parental involvement, where possible."

* name changed to protect privacy

Footnotes

[1] Conn Gen Stat §§ 19a-92g, 19a-92a.

[2] See Carey v. Population Service Int'l, 431 U.S. 678 (1977); Bellotti v. Baird, 443 U.S. 622 (1979); Roe v. Wade, 410 U.S. 113 (1973).

Parental notification and consent laws are a barrier to teens' access to safe and appropriate health care.