Fall 2006, Vol. 6, No. 2

KidsCounsel®

a newsletter for attorneys representing children in Connecticut

Sheff: Regnegotiations begin on the Ten Year Anniversary . 1

CCA Welcomes Nina Aasen, Director, TeamChild Project .. 2

KidsCounsel Training Seminar October 5, 2006: What's New? What's in the Pipleine? 2

Two New Task Forces Work to Resolve Issue of Open Courts ..... 3 (also see page 8 for update)

Connecticut's Child Protection Commission Developing New Practice Standards and Training Models 5

New Advisory Committees Tackle Juvenile Justice and FWSN Issues 6

NCLB Updates: National Report and Connecticut News 7

National Cases Highlight the Rights of English Language Learners 8

Information on the Final Report of the Governor's Commission on Judicial Reform 8

CCA Legal Advocacy: Special Education Services 9

MLPP Update: Legislative Advocacy Reaps Benefits for Disabled Children 10

Change in Medicaid Law May Delay Coverage 11

Recent Developments in Child Law: Important Case Summaries 12

www.kidscounsel.org

Sheff: Ten Years Later, Disappointing Results

Renegotiations Begin on the Ten Year Anniversary of Sheff and Its Failure to Fulfill the Promise of Opportunity

Ten years have now passed since the Connecticut Supreme Court held in Sheff vs. O'Neill that "the needy schoolchildren of Hartford have waited long enough" for the equal educational opportunities denied to them by the overwhelming racial and ethnic isolation in the Hartford metropolitan area.

Recognizing that "every passing day" these children were being denied constitutional rights, the court's opinion was infused with a sense of urgency by directing the General Assembly and the executive branch of state government to "put the search for appropriate remedial measures at the top of their respective agendas" so that changes would occur "before another generation of children suffers the consequences of a segregated public school education."

But, sadly, the school system that students entered in 1996 was approximately 95 percent African American and Latino and it remains virtually unchanged.

On three occasions since the decision, plaintiffs, represented by attorneys from the Center for Children's Advocacy, the NAACP Legal Defense Fund, and the ACLU, among others, have gone to court because they felt it was clear that the state's efforts did not, and were unlikely to achieve meaningful results.

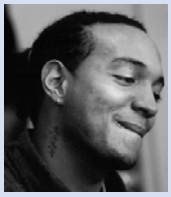
In 2002, the state and the plaintiffs entered into a four year agreement that called for a multiphase approach to ending racial and ethnic isolation: student involvement in programs would be voluntary; the plan would rely on existing programs; and the agreement would be phased in over time.

The first phase, which ends in June 2007, relied on three programs: Project Choice (permitting transfers between Hartford and suburban school systems); regional magnets (operated by the Capitol Region Education Council); and host magnets (operated by the Hartford Board of Education). Significantly, no students would be transported to schools they didn't choose, nor were school district zones redrawn.

Instead, the agreement was designed to place a significant number of Hartford children into desegregated schools both inside and outside of Hartford, benefiting all students by reflecting the rich diversity of the metropolitan area in as many schools as possible. This would be achieved by increasing both the number of magnet schools and the opportunities for Hartford students to attend suburban schools through Project Choice.

(continued on page 3)

Justice Delayed Is Justice Denied



Named plaintiff Milo Sheff at the time of the original filing and in a recent photograph.

"Every passing day denies these children the 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."

(238 Conn. 1)

KidsCounsel®

Published by ***Center for Children's Advocacy***
University of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105

www.kidscounsel.org
860-570-5327 editor: bberk@kidscounsel.org

CCA Welcomes Nina Aasen

Nina Aasen recently joined the Center for Children's Advocacy as Director of the TeamChild Juvenile Justice Project. Previously in private practice in New York State, Nina focused primarily on education law, family law, law guardian work and criminal defense for indigent clients.

She completed her undergraduate degree at SUNY Oswego, and holds a masters from Elmira College, and law degree from Syracuse University. As Director of the TeamChild Juvenile Justice Project, Nina will be involved with special education and juvenile justice issues.

Please join us in welcoming Nina to the Center for Children's Advocacy.

KidsCounsel Training Seminar

What's New? What's in the Pipeline?

On October 5, 2006, CCA began this year's KidsCounsel Training Seminar series with a presentation at the University of Connecticut School of Law by a panel of state leaders who discussed current and upcoming changes critical to effective legal representation and advocacy on behalf of Connecticut's children.

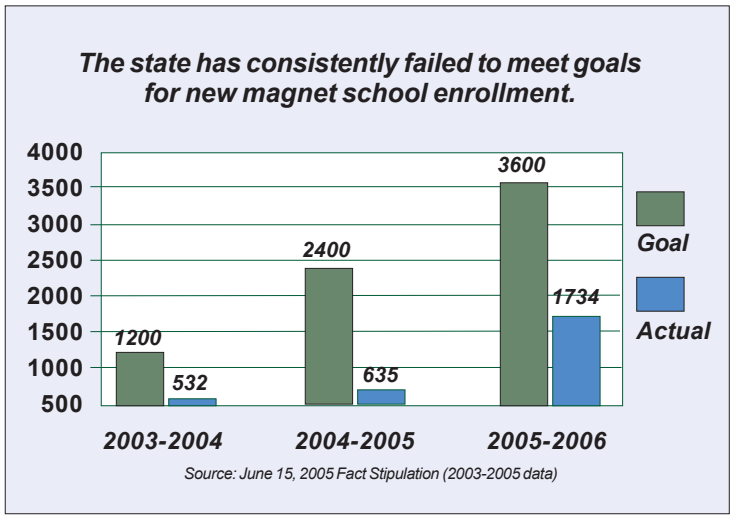
Presenters included William Carbone, Executive Director, Judical Department Court Support Services Division; Darlene Dunbar, Commissioner of the Department of Children and Families; Carolyn Signorelli, Chief Child Protection Attorney, Child Protection Commission; Honorable Barbara Quinn, Chief Administrative Judge, Superior Court for Juvenile Matters; and, Arthur Webster, Assistant Attorney General, Child Protection. Read more about this important presentation on our website at: www.kidscounsel.org/training.htm

Ten Year Anniversary of Sheff v. O'Neill

(continued from page 1)

Some gains will be realized by the time the first phase of the agreement ends. Nine magnet schools will have opened and some of those magnets have improved student performance. Project Choice will also see some gains in enrollment.

Still, the number of openings in the programs falls far short of the number agreed upon. During the first three years of the agreement, more than 600 projected seats in Project Choice did not materialize. Even more dramatically, projected seats in magnet schools fell short by more than 5,000. And many of the magnet schools failed to meet agreed-upon desegregation standards.



Yet demand for each program remains strong. Each year, hundreds of applicants try unsuccessfully to be placed in a magnet school or the Choice program. The parties are at a pivotal point now as renegotiations have begun regarding the next phase of a remedy. We owe it to future generations to ensure that constitutional violations are addressed and that equal educational opportunities are finally made available to all students.

Dennis Parker and Martha Stone

Dennis D. Parker is the Director of the Racial Justice Program of the American Civil Liberties Union, and Martha Stone is the Executive Director of the Center for Children's Advocacy.

Other Sheff Team members include attorney Wesley Horton, Matthew Colangelo of the NAACP Legal Defense Fund, and Renee Redman of the ACLU of Connecticut.

Two New Task Forces Work to Resolve Issue of Open Courts

Open Courts: An Update

Sarah Healy Eagan, JD,
Staff Attorney, Child Abuse Project, CCA

Two new working groups were formed this past spring to confront and remedy issues related to openness in the court system: The Judicial Branch Public Access Task Force and the Governor's Commission on Judicial Reform.

Judicial Branch Public Access Task Force

The Judicial Branch's Public Access Task Force was created by Justice David Borden of the Connecticut Supreme Court, in the wake of growing criticism about the number of sealed court files and the actions of Former Chief Justice William Sullivan, who purposefully delayed the publication of a controversial Supreme Court decision on the Freedom of Information Act. The Task Force, consisting of 17 lawyers, judges and media members, was charged with "mak[ing] recommendations for the maximum degree of public access to the courts, consistent with the needs of the courts in discharging their core functions of adjudicating and managing cases[1]." Specifically, the Task Force was designed to focus on three areas of judicial access:

1. Determine how to increase the accessibility of proceedings that are already open to the public.

2. Identify matters which are not currently open or accessible but which should be, either in whole or in part. Justice Borden specifically advised the Task Force that in considering this second area, group members should keep in mind that while "confidentiality will sometimes be necessary, awkwardness and embarrasment are not legitimate bases for confidentiality."

3. Identify issues that may arise in the future.

Task Force members were divided into three committees: Administrative Records/Meetings, Court Records, and Judicial Proceedings.

Task Force Members

Hon. Jon Alander
Aaron Bayer, Attorney
Dr. William Cibes, Jr.
Hon. Patrick Clifford, CAJ, Criminal
Heather Collins, Journal Inquirer
Erin Cox, WTNH, Channel 8
Hon. Julia DiCocco Dewey, CAJ, Family
Alaine Griffin, Hartford Courant, Middletown Bureau
Hon. William J. Lavery, Chief Court Administrator
Hon. Douglas Lavine, Appellate Court Judge

(continued on following page)

Two New Task Forces Work to Resolve Issue of Open Courts

(continued from page 3)

Hon. Julia DiCocco Dewey, CAJ, Family
Alaine Griffin, Hartford Courant, Middletown Bureau
Hon. William J. Lavery, Chief Court Administrator
Hon. Douglas Lavine, Appellate Court Judge
Zach Lowe, Stamford Advocate
Ken Margolfo, WTIC, Channel 61
Hon. Aaron Ment, Judge Trial Referee
Alan Neigher, Attorney
Hon. Richard N. Palmer, Associate Justice, Chair
Hon. Barbara Quinn, CAJ, Juvenile
Patrick Sanders, Associated Press
Hon. Barry Stevens

The schedule of Task Force and Committee meetings and a copy of each committee's report can be found on the web at: *http://www.jud.state.ct.us/external/news/PublicAccess/adminrec.htm.*

The Committee on Access to Judicial Proceedings' report acknowledges that "the public has a presumptive right of access to court proceedings and documents … [and the public's] real and legitimate interest in the working of our courts … requires … that the courts' business not be conducted covertly."[2] The Committees' work focused heavily on expanding electronic access to and coverage of court proceedings. The Committee made several recommendations designed to increase public access to court proceedings, and called for the installation of remotely operated television cameras in the Supreme and Appellate courts and "the adoption of a policy ensuring a publicly available transcript for out-of-court arraignments and off-site judicial proceedings."[3] The Committee is also recommending a pilot program allowing for electronic coverage of all criminal trials and sentencing. In accordance with its mission, the Committee on Access to Judicial Proceedings identified various issues for further review, including whether to expand access to proceedings in family and juvenile court. The deadline for the Task Force's final report was September 15, 2006.

Governor's Commission on Judicial Reform

The Governor's Commission on Judicial Reform, created at the same time as the Judicial Task Force, was charged with "looking at court procedures from top to bottom and developing recommendations that will balance the need for protecting privacy and safeguarding the innocent, with the public's right to know what is really happening in the Judicial Branch of government."[4]

Like the Judicial Task Force, the Commission focused heavily on electronic and media access to court proceedings. Commission member Hon. Stuart David Bear was assigned to consider and make recommendations regarding expanding public access to proceedings in juvenile court. After researching the issue and considering previous legislative initiatives regarding "open" juvenile courts, Judge Bear spoke in favor of taking steps to increase public and media access to juvenile court child protection proceedings, while maintaining procedures for ensuring the confidentiality of parties' identities. Although Judge Bear did not issue a formal recommendation to the Commission, he indicated that opening the child protection proceedings could "show the people of Connecticut what is going on in [an] area of our court system that has traditionally been closed, and bringing more attention to the proceedings [will], hopefully benefit the general assembly, the media and the public in terms of seeing if there are more things that can be done for the people and the children who end up in these circumstances."

The Commission held a series of public hearings throughout the summer in locations around the state, and is expected to issue its report and recommendations to the Governor on October 1, 2006.

Commission Members

Thomas J. Groark, Esq., Chairman
Hon. Stuart David Bear
Martin B. Burke, Esq.
William Dunn
William S. Fish, Jr., Esq.
Timothy S. Fisher, Esq.
Hon. Patricia Harleston
Hon. Christine E. Keller
Santa Mendoza, Esq.
Paul E. Murray, Esq.
Mitchell W. Pearlman
Justine Rakich-Kelly, Esq.
David T. Ryan, Esq.
Sen. Andrea L. Stillman
Vincent Valvo
Kirk Varner
Rep. Robert M. Ward

As we went to press with this issue of KidsCounsel . . .

Please see page 8 of this newsletter for information regarding the final report of the Governor's Commission on Judicial Reform published October 1, 2006, and available online at www.ct.gov/governorrell/cwp/view.asp?a=1809&q=320408

More information about this Commission can be found at: *www.ct.gov/governorrell/cwpview.asp?a=1809&q=317830&PM=1.*

(Footnotes)

[1] *See* Judicial Branch Public Access Task Force, Remarks of Sr. Assoc. Justice David M. Borden, May 25, 2006, at: *www.jud.ct.gov/external/news/PATF_remarks_052506.pdf*

[2] *See* Judicial Branch Public Access Task Force, report of the Judicial Proceedings Committee, at: *www.jud.state.ct.us/external/news/PublicAccess/judproc_finalreport.pdf* (citing Roado v. Bridgeport Roman Catholic Diocesan Corp., 276 Conn. 168, 216, 223 (2005.)

[3] Id.

[4] See Press Release from the Governor's Office, July 28, 2006, at: *www.ct.gov/governorrell/cwp view.asp?a=2425&Q=318188&PM=1*

Connecticut's Child Protection Commission Developing New Practice Standards and Training Models

Child Protection Commission Update

Sarah Healy Eagan, JD,
Staff Attorney, Child Abuse Project, CCA

The Commission on Child Protection (Commission), through Chief Child Protection Attorney Carolyn Signorelli, is charged with establishing training, practice and caseload standards for attorneys representing children and indigent parents in juvenile court. The Commission's work is designed to ensure (1) a high quality of legal representation and (2) proficiency in the procedural and substantive law and in relevant subject areas, including, but not limited to, family violence, child development, behavioral health, educational disabilities and cultural competence.

The Commission hit the ground running this summer, working with child protection professionals and attorneys from around the state to develop new practice standards and training models for attorneys practicing in juvenile court. The Commission formed two working groups to review and finalize proposed Standards of Practice: one group reviewed standards for attorneys representing parents, the other for attorneys representing children. The draft Standards of Practice are based upon standards previously developed by the American Bar Association and the National Association of Counsel for Children. The two groups worked throughout the summer months, amending and finalizing the Standards, which address the specific ethical and professional obligations of attorneys and guardians ad litem. The final version of the Standards will be submitted for comments from members of the Bar before being adopted by the full Commission.

Additionally, in accordance with its statutory mission to ensure that children and indigent parents receive quality and competent representation in juvenile court, the Commission, through the Center for Children's Advocacy, will be providing initial and in-service training for attorneys in relevant substantive and procedural law as well as trial advocacy skills. Initial training for contract attorneys will be provided in three day-long sessions. The training presentations will be conducted by juvenile court contract attorneys, assistant attorneys general, attorneys from the Department of Children and Families, staff attorneys from Greater Hartford Legal Aid and Connecticut Legal Services, and attorneys from the Center for Children's Advocacy. The first and second sessions were held on September 27, 2006 and October 11, 2006 at University of Connecticut School of Law, Blumberg Hall. The third session will be held on November 14, 2006 at a location to be determined. For more information about the training sessions, please refer to the Commission's website at *http://www.ct.gov/ccpa/site/default.asp*.

The Commission is also developing a supplemental program designed to provide both new and more experienced attorneys with training on issues important to child protection practice, including family violence; child development; behavioral health; substance abuse; educational disabilities; and, cultural competence. The supplemental program will be presented by attorneys and clinical professionals and will be provided regionally in order to ensure that all attorneys have an opportunity to attend at least one session.

Along with these efforts, the Commission continues to examine the compensation structure for attorneys and has raised the rate from $350 to $500 per case. It is also examining the system by which legal services are delivered to indigent parents and children and has a forum planned at the Legislative Office Building on November 20, 2006 *(see www.ct.gov/ccpa)*. Finally, the Commission is working to streamline and modernize the billing system in order to ensure that practicing attorneys can account for their time and be compensated in an orderly and efficient manner.

Arthur G., Connecticut Children's Place

Ricardo S., Connecticut Children's Place

New Advisory Committees Tackle Juvenile Justice and FWSN Issues

Juvenile Jurisdiction Planning and Implementation Committee Meetings Underway

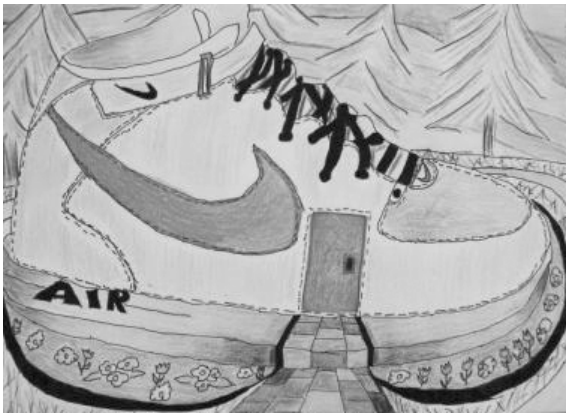
Nina Aasen, JD,
Director, TeamChild Juvenile Justice Project, CCA

The Juvenile Jurisdiction Planning and Implementation Committee was established pursuant to Public Act 06-187, section 16, which was enacted with passage of the Budget Implementer Bill at the end of the 2006 Connecticut Legislative Session. The Act establishes this Committee to "plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include 16 and 17 year-old children within the Superior Court for Juvenile Matters." Connecticut is now one of only three states in the country that treat 16 and 17 year olds as adult offenders.

While using the February 2004 Juvenile Justice Implementation Team Report as a guideline, the Committee, co-chaired by Senator Toni Harp and Representative Toni Walker, has received presentations from a wide variety of organizations, including: Judicial Department Court Support Services Division, Commissioner of theDepartment of Corrections, Interim Commissioner of Education, State of Connecticut Office of Policy and Management, Glastonbury Chief of Police, Department of Corrections Multi-Agency Working Group on Youth, Youth Futures Committee, Connecticut Police Academy and the Connecticut Juvenile Justice Alliance.

The Committee's findings, including recommendations for appropriate legislation, must be submitted in a report to joint standing committees of the General Assembly on or before February 1, 2007.

Remaining meetings are open to the public, and are scheduled at the Legislative Office Building on October 5, October 17, November 2, November 16, December 7, January 4, January 18 and February 1. The complete list of meeting dates, agendas and Committee members can be found at *www.cga.ct.gov/hdo/jjpic*.



Joe T., Connecticut Children's Place

Families with Service Needs Advisory Board Addresses Issues Relating to Status Offenders and Truants

Martha Stone, JD,
Executive Director, CCA

During the last days of the 2006 legislative session, as part of the Budget Implementer Bill, the legislature passed section 42 of Public Act 06-188, which creates a Family with Service Needs (FWSN) Advisory Board to address issues relating to status offenders and truants.

The Board has four express purposes:

1. Monitor progress being made by DCF in developing services and programming for FWSN girls and other girls;

2. Monitor progress of the Judicial Department in the implementation of Public Act 05-250 (which mandates that no status offender who violates a court order can be convicted as a delinquent or held in a detention center after Oct 1, 2007;

3. Provide advice with respect to such implementation of Public Act 05-250 upon request of the Judicial Department or General Assembly;

4. Make written recommendations to the legislature and Judicial Department by December 31, 2006 with respect to the accomplishment of the implementation of Public Act 05-250 by December 31, 2007.

Upon completion of the report in December, 2007, the Advisory Board will be disbanded.

Martha Stone, Executive Director of the Center for Children's Advocacy, and Preston Britner, Associate Professor of Human Development and Family Studies at the University of Connecticut, have been appointed as Co-Chairs of the Advisory Board. Other Board members include the Chief Court Administrator, the Child Advocate, the Chief Child Protection Attorney, key members of the Judiciary and Human Services Committees, the OPM secretary, two DCF employees, a juvenile court judge, a public defender and prosecutor, and a gubernatorial appointee.

At the first meeting of the Task Force, held on August 29, a presentation was made by Sara Mogulescu of the Vera Institute of Justice, entitled "Changing the Status Quo for Status Offenders[1]." On October 4, Dee Richter, Executive Director of the Florida Network of Youth and Family Services presented Florida's diversionary model. For more information on the FWSN Advisory Board, go to *www.cga.ct.gov/kid/FWSN/FWSN.asp*.

[1]*See* "Changing the Status Quo for Status Offenders" at www.vera.org/publications publications_5.asp?publication_id=253

No Child Left Behind: Federal And State Updates

Emily Breon, JD, MSW, Equal Justice Works Fellow,
Truancy Court Prevention Project, CCA

National Report Shows Failing Programs

Number of Schools "In Need of Improvement" Doubles in One Year

"National Assessment of Title I: Interim Report"

In April, the U.S. Department of Education released a report on Title I, the federal program designed to improve education for disadvantaged students.The number of Title I schools identified as "in need of improvement" has nearly doubled in one year. If they follow their current pattern, only four states (Delaware, Kansas, North Caroline, and Oklahoma) will get 100% of their poor-student subgroup to reach the state proficiency level by the 2013-2014 school year, as prescribed by NCLB.

Only seventeen percent of eligible students nationwide signed up for Supplemental Education Services, the free tutoring offered under NCLB. Less than one percent of students eligible for the school choice option under NCLB transferred to higher performing schools. According to the U.S. Department of Education, more than half of school districts did not even tell parents that their children were eligible for these options until after the school year had already started.

Federal Government Requires Teacher Equity

The U.S. Department of Education determined that Connecticut's highly qualified teachers (HQT) plan, revised in early July, still contains deficiencies. The state's plan met or partially met 5 out of 6 requirements but completely failed to meet its 6th requirement - an Equity Plan with specific steps to ensure that poor and minority children are taught at the same rates as other children by highly qualified and experienced teachers, as required by NCLB. Nearly 7% of teachers in Connecticut's poorest cities fail to meet the standard, while slightly less than 2% fail to meet the standard in wealthier towns. Nine states have complete HQT plans; four states failed the reviews and must submit new plans, and the majority, like Connecticut, must submit a rewritten plan by the end of September. NCLB required that all teachers in core subjects were supposed to be "highly qualified" by the school year that just ended, which generally means that they hold at least a standard license and show command of the subjects they teach.

NCLB Requirements for Paraprofessionals

From the Education Law Center of Philadephia publications (www.elc-pa.org/nochild/publications.html) the following is a synopsis of NCLB requirements related to pararofessionals.

What are the rules for paraprofessionals?

Every school must keep a file with information about the qualifications of its paraprofessionals. Paraprofessionals in public schools must be "highly qualified:"

- All paraprofessionals hired after January 2002 must be "highly qualified" at the time they are hired.
- All other paraprofessionals must become "highly qualified" no later than January 2006.
- Highly qualified paraprofessionals must have a high school diploma (or its equivalent), plus *one* of the following (with some exceptions):

    1. Completed at least 2 years of study at an institution of higher education.
    2. Obtained an associate's (or higher) degree.
    3. Received a passing score on a local or state paraprofessional examination covering instruction issues in reading, writing, and mathematics.

- School principals must create a written document each year declaring whether their school is in compliance with the NCLB rules for paraprofessionals. Each school must keep a copy of this document and make it available for inspection upon request by any member of the public.

NCLB Connecticut Update

Update on Connecticut's NCLB Lawsuit

State of Connecticut and the General Assembly of the State of Connecticut v. Margaret Spellings, in her official capacity as Secretary of Education

On September 27, 2006, a federal judge dismissed three of the four counts in Connecticut's NCLB complaint. The complaint, filed in 2005, contends that the refusal by the U.S. Department of Education to fully fund the testing system mandated by NCLB violates both the spending clause and the law's language against unfunded mandates. The ruling left open the possibility to review the complaint's fourth count which claims that U.S. Secretary of Education Margaret Spellings acted arbitrarily and violated administrative procedures when she rejected amendments requested by Connecticut regarding the testing of particular groups of children, such as those who speak little or no English.

National Cases HIghlight the Rights of English Language Learners

Emily Breon, JD, MSW, Equal Justice Works Fellow,
Truancy Court Prevention Project, CCA

School Districts Denying Refugee Students Equal Access to Education

Within the past year, advocates have filed discrimination complaints with the U.S. Department of Education's Office of Civil Rights (OCR) on behalf of Somali and Somali Bantu students in Pittsburgh, PA and Springfield, MA. In both cases, advocates alleged that school districts were denying the refugee students equal and effective access to an educational program, as required by Title VI of the Civil Rights Act of 1964. Pittsburgh Public Schools settled with the complainants, while OCR made a finding in the Springfield case.

Both the Springfield and Pittsburgh cases highlight the rights of English Language Learners (ELLs). In determining that Springfield Public Schools was out of compliance, OCR used the three-prong analytic framework articulated in *Castaneda v. Pickard*, 648 F. 2d 989 (5th Cir. 1981). This requires that a program be (1) based on a sound educational theory, (2) adequately supported, with adequate and effective staff and resources, so that the program has a realistic chance of success, and (3) periodically evaluated and, if necessary, revised.

OCR found that the District failed to satisfy the second prong. The breakdown in Springfield's program implementation included (1) the failure to provide Somali students with the adequate amount of English for Speakers of Other Languages (ESOL) instruction, (2) placing students with content area teachers who were not conversant in sheltered methodology, a type of instruction that utilizes sheltered English immersion techniques, (3) a lack of materials, and (4) the inability to clarify instruction in Somali. As a result, in addition to agreeing that students will have the appropriate amount of ESOL instruction and instruction with teachers trained in the sheltered methodology, the district agreed to provide Somali students with after school and summer school programs, additional bilingual English/Somali tutors, and a Somali outreach worker.

The Pittsburgh case highlights services outside the classroom that ELLs and their families are entitled to, pursuant to Title VI, so that they can access their education program effectively. The Education Law Center's complaint alleged, among other things, that the school district failed to communicate with the students and their families in a language that they understood. In May, the district agreed to employ a Somali-speaking ombudsperson and to develop and implement policies and procedures that will ensure that the district properly communicates with families.

Within the past two years, Hartford has seen a marked increase in New Arrivals from countries such as Somalia, Liberia, Sudan, and Russia. The vast majority of these New Arrivals are refugees, and a substantial number have never had formal schooling or exposure to the basics of Western education, such as pencils, desks and books. Community members are currently in discussions with Hartford Public Schools regarding the quality of education for these students as well as their parents' abilities to communicate with the school, given their language barriers.

For more information on the rights of ELL's, visit the Office of Civil Rights English Language Learner Resources page at *www.ed.gov/about/offices/list/ocr/ellresources.html*

As this newsletter went to press:

Governor's Commission on Judicial Reform
(please see article on page 4 of this newsletter)

The final report of the Governor's Commission on Judicial Reform, published October 1, 2006, recommended opening juvenile court proceedings concerning abused, neglected, uncared for and dependent children, and those concerning petitions for termination of parental rights. Specifically, the Commission recommended that Connecticut General Statute § 46b-122 be amended by adopting legislation proposed in 2005, HB6812, an Act Concerning Public Access to Proceedings in Certain Juvenile Matters. The 2005 bill provides that juvenile court proceedings shall be presumptively open and that the court may exclude individuals on a case-by-case basis after considering the following:

1. the likelihood of the person seeking access to disrupt the proceedings;

2. the existence of a compelling reason (offered by a party) for exclusion;

3. the privacy interests of people appearing at the hearing and the need to protect the child and other parties from harm ;

4. whether the person's presence will inhibit testimony or the disclosure or discussion of material information; and

5. whether less restrictive alternatives are available or appropriate to the particular case.

The 2005 bill requires that all findings be made on the record. The bill mirrors the current New York State rule regarding child protection proceedings.

The Commission's recommendation was made unanimously with the stated goal of increasing public awareness regarding the "difficulties faced by children and the lack of resources allocated to their care and treatment." The Commission envisioned that open courts will "shed light on the need for immediate services for many of these children, inspire the public to recognize the need to support the allocation of resources for our most vulnerable children, and provide the measure of accountability for those who work in that process." See Governor's Commission on Judicial Reform Final Report, pg. 11, at: www.ct.gov/governorrell/cwp/view.asp?a=1809&q=320408

CCA Legal Advocacy: TeamChild and MLPP
Two Cases Address Need for Special Education Services

TeamChild Project
Special Education

The Case of Joseph R.

Emily Breon, JD, MSW, Equal Justice Works Fellow, Truancy Court Prevention Project, CCA

Joseph's mother called the Center for Children's Advocacy after her son had been suspended for the *sixteenth time in his third grade year.* Because of the events leading up to his last suspension, Joseph had also been arrested, and the school was in the process of completing an expulsion packet.

For a long time, Joseph's mother felt that he was not getting what he needed at school; the school had not granted her request for a special education evaluation, despite that fact that Joseph had been retained once and his promotion was in doubt during another school year. Teachers had repeatedly told Joseph's mother that he struggled in reading. As an intervention, school staff had held five Student Assistance Team (SAT) meetings over the years. However, even though the interventions proposed by the team repeatedly failed, the school never referred Joseph for an evaluation for special education services.

When CCA discovered that the school was considering expelling Joseph without evaluating him for special education services, our attorney argued that Joseph's mother should be entitled to assert the discipline-related provisions of the Individuals with Disabilities and Education Act (IDEA), which provide important safeguards to parents, because the school had prior knowledge that Joseph had a disability. The "knowledge requirement" is met if staff expresses concern about a child's pattern of behavior to the director of special education or other supervisory personnel (IDEA § 615 (k)(5)(B)).

The attorney argued that the number and content of Joseph's SAT meetings put the school district on notice of Joseph's disability. The school agreed to postpone the expulsion hearing until Joseph has been evaluated for special education services. Hopefully, through the evaluation process, the school will specify Joseph's educational needs so that he can be successful in school and provide him with a fair disciplinary process.

Medical-Legal Partnership Project
Special Education

The Case of Raymond S.

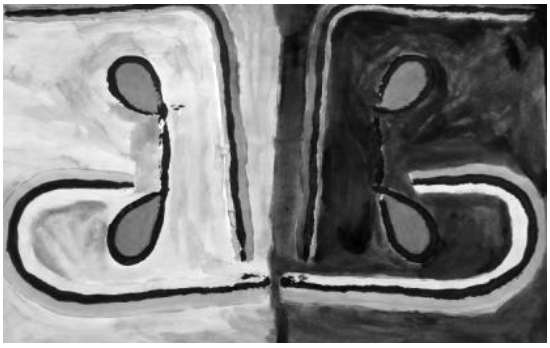
Gladys Idelis Nieves, JD, Staff Attorney, Medical-Legal Partnership Project, CCA

Raymond S. is a 7 year old boy with Down syndrome, with little to no ability to effectively communicate verbally or manually. Raymond was transitioned into a general education 1st grade classroom for the 2005/2006 school year. His Individualized Education Plan (IEP) called for 2 periods a day of support by a Special Education (SPED) support facilitator, as well as a 1:1 paraprofessional. He was also reportedly receiving occupational therapy for ½ hour each week, physical therapy for ½ hour each week, and speech & language for 1 ½ hours each week.

Upon intake, Ms. S. (Raymond's mother) reported that her son was languishing terribly in the classroom. She reported that her son was not receiving the SPED support he needed, that there was no functional educational plan in place for him and that appropriate curriculum modifications were not being implemented. Ms. S. felt strongly that the classroom her son was placed in was not meeting his educational needs appropriately.

The Medical Legal Partnership Project (MLPP) arranged for an educational consultant to observe the classroom and make recommendations. Recommendations made were on par with Ms. S.' concerns, and included training his educational providers to create a communication book for Raymond and a more developmentally-appropriate curriculum. The school failed to properly implement any of the recommendations.

With the MLPP now serving as her attorney, Ms. S. went to mediation with no success, and ultimately arranged for a due process hearing. Upon hearing testimony at the due process hearing, the Hartford Board of Education agreed to settle the case out of court. A settlement was achieved that included compensatory education for Raymond at an out-of-district special education program for at least the 2006-2007 school year.



Jamie B., Connecticut Children's Place

MLPP Update:
CCA's Legislative Advocacy Reaps Benefits for Disabled Children

Jay Sicklick, JD, Deputy Director, CCA;
Director, Medical-Legal Partnership Project, CCA

The Center's *Medical Legal Partnership Project* achieved substantial success this past legislative session by writing, introducing and advocating for the expansion of therapeutic services for children with severe disabilities. The resulting legislation provides increased access to physical, occupational and speech and language therapies to the state's HUSKY A Medicaid recipients.

In June 2005, parents of a severely disabled West Hartford child approached the *MLPP* seeking assistance with health insurance and Medicaid access. Their child suffers from a number of chronic impairments which prevent him from walking and render him virtually unable to communicate. For several years, the parents attempted to convince the state Department of Social Services (DSS) to allow for Medicaid reimbursement of therapeutic services (i.e. physical, occupational and speech and language) outside of the home – but each time DSS rejected their pleas on the basis that the federal regulations prevented reimbursement for therapies conducted outside of the home environment.

The MLPP agreed to advocate for this child, along with hundreds of other severely disabled children whose daily activities and school attendance made it practically impossible to access additional therapies that would improve their quality of life. Most of the affected children did not find therapeutic intervention, conducted early in the morning or evening, conducive to an appropriate home environment, or more importantly – there were few, if any therapists willing to conduct therapy before or after normal business hours.

The MLPP wrote a revision to Conn. Gen. Stat. § 490(d), which previously allowed reimbursement of therapeutic services for home health care agencies providing these services in a "home or substantially equivalent environment." Pursuant to conversations with families of children with severe disabilities who would most benefit from expansion of these services, the simple, but powerful revision proposed by the MLPP included language to expand "substantially equivalent environment" to "facilities that provide child day care services … and after school programs." The bill was subsequently introduced in the legislature's joint Human Services Committee, where a hearing was held on March 7, 2006.

At the hearing, parents affected by this proposed legislation provided moving and powerful testimony as to why this slight change would drastically impact many lives, and most importantly, improve the quality of life for hundreds of severely disabled children.

As a result of the testimony, the bill passed through the committee unanimously on March 21 and moved to the Appropriations Committee. Despite no opposition to statutory revision, and the absence of any fiscal impact statement to the contrary, the bill died in the Appropriations Committee on the last day of committee hearings. Despite this setback, and due to the extremely dogged advocacy of the Center's lobbyist, the bill found its way into DSS' implementer bill – where the key language revision was included *verbatim.* Unfortunately, in the early morning hours of May 3, 2006, the language noted above was effectively altered via an amendment to include HUSKY A recipients, but to *exclude* children receiving insurance under the Medicaid Plan (straight Title XIX beneficiaries).

Soon after the legislative session ended, the MLPP wrote the DSS Commissioner seeking assistance to expand the coverage to the state's Title XIX recipients. Unfortunately, neither the Commissioner nor any other DSS official responded to the MLPP's request.

Despite the last second legislative setback, and DSS' unwillingness to forge a collaborative effort to provide coverage for the Title XIX recipients, the MLPP's efforts to expand insurance coverage will have a dramatic affect on the lives of scores of severely disabled children who will benefit from enhanced therapies and more effective treatment. From July 1, 2006 forward, children in after school programs, or who spend the day in child day care centers, will find greater access to physical, occupational and speech and language services that were formerly provided only by school therapists, or birth-to-three providers.

The MLPP is committed to expanding these therapeutic services to the Title XIX recipients, and has begun efforts at securing these benefits for all disabled children.

To Help with This Year's Legislative Efforts

The Center welcomes assistance from providers and advocates who are willing to join the effort in the upcoming legislative session. Please contact Jay Sicklick at 860-714-1412, or *jsicklic@kidscounsel.org.*

Additional information on pending state legislation is available on the Connecticut Legislature website at *www.cga.ct.gov* or,
Center for Children's Advocacy's website at
www.kidscounsel.org/legislative_state_SigPending.htm

Change in Medicaid Law May Delay Coverage

New Law Requires Strong Proof of Citizenship

Gladys Idelis Nieves, JD,
Senior Staff Attorney, Medical-Legal Partnership Project, CCA

Effective July 1, 2006, a new federal law requires strong proof of citizenship for United States citizens who apply for Medicaid or wish to renew their coverage.

In order to prove citizenship, individuals will have to produce an original or certified copy of a birth certificate, passport, adoption decree, citizen ID card or other accepted official record. This requirement will inevitably result in delays in coverage, and in many cases, denial of coverage to eligible applicants. *Please note that as of this printing, Connecticut has not passed any regulatory provisions embodying the federal law and authorizing the Department of Social Services to terminate services based solely on inability to verify citizenship; however, the passage of such a provision is imminent.*

The State of Connecticut may lose millions in federal dollars if it fails to comply with the new federal requirements. Interestingly, Connecticut, even if it complies, may still incur higher costs due to the increase in treatment for the uninsured, a problem that will most likely occur with many families who are simply unable to verify citizenship status.

Verifying citizenship status may seem as though it should be easy, however, in reality many citizens do not have original copies of their birth certificates at their disposal and were born out of state; or, in many cases, they were born outside of the country. These families will have a difficult time securing their birth records due to bureaucratic delays they will encounter, and because many will lack the financial means needed to obtain these records in a timely manner. In worst case scenarios, the state is allowing individuals who cannot track down important government documents to submit an affidavit, signed under penalty of perjury; however, these affidavits must also be signed by two individuals, one of whom cannot be related to the applicant, who can verify the applicant's citizenship status. These individuals must be US citizens themselves, and provide such proof upon submission.

While there are some exemptions allowed under the law, such as for women with breast and cervical cancer, newborns born to a mother on Medicaid, certain supplemental security income (SSI) recipients, foster children, and/or Medicare enrollees applying or renewing Medicaid coverage, the law will directly affect over 300,000 Connecticut citizens.

Many are working tirelessly in an attempt to repeal this new federal requirement and/or working to pass legislation that would allow states to accept less demanding criteria for proof of citizenship. For now, however, we must deal with the unfortunate backlash this new federal law will most definitely inflict among many of our hardworking citizens.

Sources:

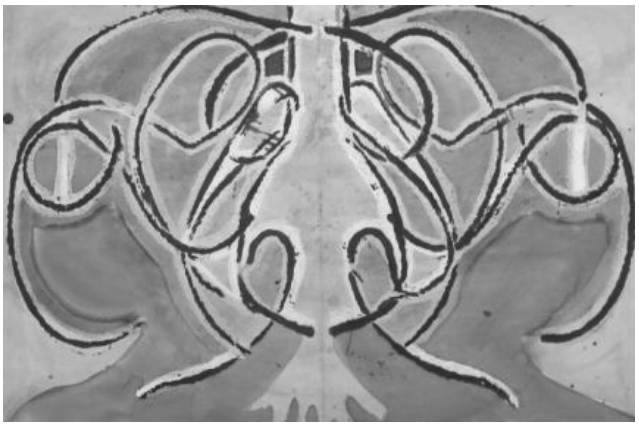
Connecticut Voices for Children, New Federal Citizenship and Identity Documentation Rules Mean Delays and Denials of Care, dated July 11, 2006. *www.ctkidslink.org/*

Connecticut Voices for Children, Which US Citizens Need to Document their Citizenship and Identity for Medicaid, dated July 27, 2006. *www.ctkidslink.org/*

Covering Connecticut's Kids and Families, Documents that can Prove Citizenship and Identity for Husky A and Medicaid Applicants, dated July 28, 2006. *www.ctkidslink.org/*

Connecticut Department of Social Services, Medicaid Citizenship and Identity Verification, Covering Connecticut's Kids and Families Quarterly Meeting, September 18, 2006

Anastasia S., Connecticut Children's Place



Shajeja A., Connecticut Children's Place

Recent Developments in Child Law: Important Case Summaries

Abuse and Neglect

Termination of Parental Rights - Release of Confidential Records

Jay E. Sicklick, JD, Deputy Director, CCA; Director, Medical-Legal Partnership Project, CCA; and Sarah Healy Eagan, JD, Staff Attorney, Child Abuse Project, CCA

In re Reginald H
2006 Conn. Super. LEXIS 2744
(JD Middlesex, Bear J., Aug. 25, 2006)

In this superior court decision, the trial court denied the State's request that a mother's confidential mental health and substance abuse treatment records be disclosed for purposes of a termination of parental rights (TPR) trial. The State argued that the mother had a limited right to privacy because she was bound by the previously court ordered "Specific Steps", which required her to sign releases and allow DCF to communicate with her service providers. Additionally, the State argued, pursuant to In re Romance, 30 Conn. App. 839 (1993), that the mother's records should be disclosed because it was in the best interests of the child that all records relevant to the TPR proceeding be available for review.

The mother objected, noting that records of communications between a psychiatrist and patient are confidential and that applicable state and federal statutory laws do not provide for a general "best interest of the child" exception to the rule that certain medical records are confidential.

The trial court, citing the Connecticut Supreme Court's decision in Falco v. Institute of Living (Falco), denied the State's request that the mother's confidential mental health treatment records be disclosed. In Falco, the Court held that the psychiatrist-patient privilege may be overridden only by legislatively enacted exceptions and such exceptions should be narrowly construed. 254 Conn. 321 (2000). The Falco Court concluded that courts were not permitted to make case-by-case determinations of when privilege may be overridden. The trial court in Reginald H. therefore determined that in the wake of Falco, the "best interest of the child" rationale for compelling disclosure of otherwise privileged documents was no longer valid.

The trial court noted that C.G.S. 52-146f(5)–protecting psychiatric records from disclosure, and the statute at issue in Falco–does not list "best interest of the child" as a statutory exception to privilege. However, the statute does provide that the "psychiatrist-patient" privilege may be overridden where the patient introduces his mental condition as an element of his claim or defense, as was the case in In re Romance. The Reginald H. court, citing other superior court opinions and treatises, reasoned that a parent does not *raise* her mental health simply by defending herself against the State's TPR petition. The court noted that it remained to be seen whether Reginald's mother chose to testify and what the scope of her testimony would be.

The court further held that the "Specific Steps" did not provide the State the means to compel the disclosure of records because the "Specific Steps" are binding only in so far as the State's goal is to reunify the family. Once the State files a TPR petition, a new proceeding begins, and the "Specific Steps" are no longer binding on the parent. The court cited two recent superior court decisions, In re Ashley W. 2006 WL 361814, Conn. Super. Ct., J.D. Middlesex (Bear J., Feb. 1, 2006), and In re Na-Shawn J., 2006 WL 2002913 Conn. Super. Ct., J.D. Danbury (Winslow, J., June 29, 2006), that contained similar conclusions regarding the role of the "Specific Steps" and the impact of Falco on Romance motions. Additionally, the court pointedly noted that the State failed to identify either case in its written or oral argument. The court's memorandum declared that all future Romance motions should cite those superior court opinions.

The court also denied the second part of the State's Romance Motion, its request that the mother's substance abuse treatment records be disclosed. The court first noted that pursuant to the applicable federal standard such records may be revealed only if there is an appropriate showing that "good cause" compels disclosure. 42 U.S.C. [section] 290. Under the corresponding regulations, disclosure may be allowed when the patient "offers testimony or other evidence pertaining to the content of the confidential communication." 42 C.F.R. 2.63(a)(3). In Romance, the privilege and waiver issues arose after the mother testified and voluntarily raised issues regarding her mental health. In the present case, the court held, the mother's "pro forma denial" did not constitute a waiver of her right to assert statutory privileges. Id. at * 25 (citing In re Ashley W., supra; In re Na-Shawn J., supra).

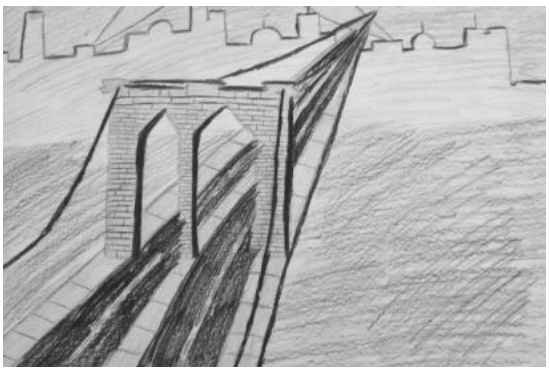
The trial court held that the State did not meet its burden under the federal "public interest" standard, noting that "[t]he [federal] good cause showing is not a low burden to meet. … [I]t will be the exceptional case that meets the good cause requirements …". Id. at * 32 (quoting Guste v. Pep Boys-Manny, Moe and Jack, Inc., (E.D. La., Oct. 14, 2003.) The court also quoted federal case law for the proposition that an order for disclosure is "a unique kind of court order and that there is a "strong presumption against disclosing records … and the privilege afforded them should not be abrogated lightly." Id. at * 35 (citing Fannon v. Johnson, 88 F.Supp.2d 753, 758 (E.D. Mich. 2000). The court ultimately concluded that the State had not made a sufficient demonstration, concluding that "good cause is more than a statement that the confidential documents and information are necessary for the upcoming trial." Id. at * 36.

In the future, the court warned, the state must do the following, at minimum, to meet the federal standard:

"(1) specify for the court in the context of a Romance motion, its efforts to obtain confidential, privileged documents and information prior to and after its filing of a termination of parental rights petition, including its efforts to obtain releases for such documents and information, (2) provide to the court copies of each release signed by a parent and to specify and describe each document and the information received pursuant to each such release, and (3) explain why in the context of the particular case, instead of by general theories and claims, and in light of all of the evidence available to DCF concerning the specific case, that there is good cause to apply such public interest standard in favor of DCF. DCF … thus should be prepared to explain to the court why the years of its work with the family, each individual member thereof, family relatives and others that occurs prior to the trial of TPR cases has not provided it with sufficient information to avoid its need for records and information protected by federal and state law." Id. at * 37.

In this case, the court reasoned that DCF had spent years working with the family and had ample opportunity to learn virtually everything about the family members. Furthermore, DCF had opportunities when the "Specific Steps" were still binding to access the mother's medical and substance abuse treatment records. The court observed that if, at this stage of the proceedings, the State was truly dependent on the contents of the mother's confidential records in order to prove the allegations of its TPR petition, then "perhaps it should not have filed, and/or it should withdraw, such petition."Id.at* 19.

Finally, the court questioned the State's routine practice of importing the federal "public interest/good cause" standard applicable to alcohol and drug treatment records into its requests for other types of medical records, protected by specific state statutory provisions. Id. The court cautioned that the State should "now recognize that it is time for it to rethink, clarify and limit its previous approach in seeking discovery of protected privileged and confidential records [before TPR trials.]" Id. at * 26.



Cowan D., Connecticut Children's Place

In re Shaun B.
97 Conn. App. 203 (2006)
Officially Released: August 22, 2006

In a relatively straight forward termination of parental rights case, the appellate court affirmed the termination of a mother's parental rights where the trial court found the failure to rehabilitate constituted the most significant barrier to reunification. The Department of Children and Families (DCF) initially became involved in July 2002 when Shaun (then one year old) and his mother resided in a homeless shelter. The DCF invoked a 96 hour hold and sought temporary custody due to the mother's inability to care for the child and her repeated eviction from homeless shelters due to "confrontational behavior." The DCF found that the mother had left the child unattended, failed to fill prescriptions for the boy, and engaged in inappropriate discipline.

Things proceeded along without reunification – though the mother visited him on a regular basis. The key incident that inevitably resulted in termination, however, occurred in April 2003, when the mother forcibly removed the child and threatened a social worker during one of her visits to the foster home. The mother then took the child to New York City for a period of two weeks, whereupon she finally turned herself in to the police. Not surprisingly, the DCF filed its termination petition shortly thereafter.

The Appellate Court upheld the trial court's findings on two issues:

First, the overwhelming evidence supported the claim that the respondent (mother) had failed to rehabilitate herself pursuant to Conn. Gen. Stat. §17a-112(j)(3)(B)(ii). The litany of failures included the inability to provide stable and adequate housing; failure to address mental health and anger management issues; non-cooperation with court-ordered evaluations; the unauthorized escape to New York City and the resulting felony charges that sprung from that episode; and her diagnosis of major depression and moderate and borderline personality disorder.

Second, the court found that the DCF had proved by clear and convincing evidence that termination of the mother's parental rights was in the child's best interest. *See* Conn. Gen. Stat. § 17a-112(k). Once again – the court revisited the abduction incident, concluding that the resulting incarceration prevented "the respondent and child from visiting and preventing the respondent from making any meaningful efforts to make it in the best interest of the child to reunite with him."This separation, combined with the warmth and stability achieved with the foster family, carried the day for the court.

This case is available on the Judicial Branch website at *www.jud.state.ct.us/external/supapp/Cases/AROap/ap97/97AP425.pdf*

Recent Developments in Child Law: Important Case Summaries

Abuse and Neglect

Termination of Parental Rights

In re Stacey G.
94 Conn. App. 348 (2006), Officially Released: March 21, 2006

In a short and straightforward case, the Appellate Court reversed a trial court's denial of a father's motion to transfer guardianship on evidentiary grounds, and because the trial court would not grant a continuance to hear evidence from a forensic psychologist.

The father's travails began back in August 1999 when the Department of Children and Families (Department) removed his two year old daughter, Stacey, from the custody of the appellant father and his wife. After a court ordered adjudication of neglect, the Department placed the girl in the care of the father's sister and brother-in-law (the "guardians"). In April 2001, the Department transferred legal guardianship to the guardians and Stacey's commitment was revoked. The father's parental rights were never terminated. In July 2002, the father wrote a letter to the court, which was treated as a motion to open the transfer of guardianship and motion to restore guardianship to him.

Subsequently, in March 2004, the father obtained an order releasing the Department's files in the matter to a forensic psychologist for the limited purpose of conducting a forensic examination of the father which was to be conducted prior to the hearing on the motion to reopen. Before forensic evaluation was completed, however, the court held the hearing on the motion to transfer guardianship. Despite hearing evidence that went directly to the father's parental capacity, the court denied a motion to continue pending the completion of the forensic evaluation, and denied the motion to transfer guardianship.

On appeal, the court found two grounds to reverse the trial court and remand for a new hearing:

First, the trial court's admission of three psychological reports containing allegations by persons other than the author that the respondent had sexually abused another child, despite the fact that the respondent had never been arrested in connection with those allegations. The fact that a trial court has a certain latitude in disregarding incompetent evidence did not overcome the fact that the reports were themselves inadmissible hearsay – with allegations presented (by the evaluators) that were not subject to cross examination at the hearing.

Second, the court's failure to grant the father's motion for a continuance so that he could present testimony from the forensic psychologist was an abuse of discretion. It was somewhat strange that the trial judge would allow the Department's records to be released to the psychologist but then deny the continuance until the evaluation was completed. For those reasons, the court predetermined its view of the evidence that the father sought to obtain and present.

This case may be found at the Judicial Branch website at *www.jud.state.ct.us/external/supapp/Cases/AROap/AP94/94AP531.pdf*

Education

Jay E. Sicklick, JD, Deputy Director, CCA;
Director, Medical-Legal Partnership Project, CCA

Three cases of note were recently adjudicated in three very different forums. From the Supreme Court of the United States to a Connecticut Superior Court, litigants have brought issues that resonate for practitioners who delve into educational matters on behalf of children and their families.

Special Education – Expert Fees

Arlington Central School District v. Murphy
126 S. Ct. 2455 (2006)

The omnipresent and always controversial issue of attorneys' and experts' fees in special education found a path all the way to the Supreme Court in the 2005-2006 term. In Arlington Central School Dist. v. Murphy, the plaintiffs sought fees for services rendered by an educational consultant used during legal proceedings held pursuant to the Individuals with Disabilities Education Act (IDEA). Despite their status as the "prevailing party" in the lengthy litigation, the Supreme Court overturned the Second Circuit Court of Appeals by holding that 20 U.S.C. § 1415(i)(3)(B) does not authorize prevailing parents to recover expert fees.

The Murphys (Pearl and Theodore) filed an action in United States District Court on behalf of their son, Joseph, seeking that the school district and Supreme Court petitioner (Arlington Central) pay for Joseph's private school tuition for specified school years. The Murphys prevailed in District Court and the Second Circuit affirmed the decision. As a prevailing party pursuant to IDEA, the Murphys sought $29,000 in fees paid to an educational consultant, who assisted them throughout the proceedings. The Second Circuit affirmed the District Court's ruling that the educational consultant's fee could be reimbursed, but only for $8,650, which represented the time actually spent after the request for an administrative hearing had been filed.

The Supreme Court granted review in an attempt to resolve a split amongst the Circuits with respect to whether Congress authorized the compensation of expert fees to prevailing parties in IDEA actions. In its reversal of the Second Circuit, the Supreme Court relied on two grounds:

First, by way of background, the Court noted that Congress enacted IDEA pursuant to the Spending Clause of the Constitution, which requires that acceptance of federal funds by states must be set out "unambiguously." Thus, the question in this case is whether IDEA furnishes clear notice regarding expert fees. And here, while IDEA provides an award of "reasonable attorneys' fees" for prevailing parties, the text of § 1415(i)(3)(B) does not authorize the award of additional expert fees, and it "fails to provide the clear notice that is required under the spending clause."

Second, the Court relied on Crawford Fitting Co. v. J.T. Gibbons, 482 U.S. 437 (1987) and West Virginia Univ. Hospitals, Inc. v. Casey, 499 U.S. 83 (1991) - both cases interpreting federal rules and statutes (Fed. R. Civ. P. 54(d) and 42 U.S.C. § 1988, respectively). The thrust of the analysis rests on the analogies in the respective cases, where witness fees and attorneys' fees were denied because they were not enumerated in the analogous statutes.

In an interesting dissent, Justice Breyer, joined by Justices Stevens and Souter, argued that Congress' intent, as evidenced by a 1986 conference report, was to include reasonable expenses of expert witnesses and reasonable costs of any test or evaluation which was found to be necessary for the preparation of the parent or guardian's case "in the action or proceeding." Based on this section of H.R. Conf. Rep. No. 99-687, p.5 (1986), Justice Breyer finds "no good reason for [the Court] to interpret the language of [IDEA] as meaning the precise opposite of what Congress told us it intended."

Protection & Advocacy's Access to School Affirmed

Protection & Advocacy v. Hartford Bd. of Educ.
2006 WL2642111 (2d Cir. Sep. 15, 2006)

On September 15, 2006, the Second Circuit Court of Appeals affirmed the District Court's judgment which entered a permanent injunction against the Hartford Board of Education in the case of Protection & Advocacy v. Hartford Bd. of Educ. In this case, the Connecticut office of Protection and Advocacy for Persons with Disabilities (P&A) brought suit against the Hartford Board of Education (HBOE) requesting access to the HBOE's controversial Hartford Transitional Learning Academy (HTLA) to (1) observe programs and speak with students, and (2) give P&A a directory of HTLA students and contact information for their parents/guardians to investigate allegations of abuse and neglect at the school.

In a lengthy decision issued in February 2005, the District Court declared that defendants' refusal to provide the agency with physical access to the facility when students were present, and with name and contact information for parents and legal guardians of the facility's students, violated the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. §§ 15001-15115 and the Protection and Advocacy of Individual Rights Act (PAIR), 29 U.S.C. § 794e. Defendants were ordered to grant both physical access and names and contact information to allow the agency to perform its statutory duty to investigate suspected abuse and neglect.

On appeal - the HBOE challenged the courts findings, and added the assertion that the Family Education Rights and Privacy Act (FERPA) and Individuals with Disabilities Education Act (IDEA) prohibited release of information, visitation during school hours, etc. even if PAIMI and PAIR provided P&A access to the students and information. After oral argument, the Circuit Court solicited the U.S. Departments of Education and Health & Human Services to file amicus briefs to provide their interpretation of FERPA and IDEA. Both agencies filed documents soundly rejecting HBOE's arguments, and thus HBOE dropped that portion of their appeal. The Court went on to affirm the District Court's holding, including the issuance of the permanent injunction.

The case may be found on LEXIS or Westlaw, or by going to the Second Circuit's website at *www.ca2.uscourts.gov/*

Who Pays for Bullying?

Santoro v. Town of Hamden
2006 WL2536595 (Conn. Super. Ct. J.D. New Haven, Robinson, J. Aug 18, 2006.)

In another interesting development, a New Haven Superior Court Judge, Angela Robinson, held that parents of a Hamden public school student who claimed their son, an alleged victim of bullying, was not adequately protected by the school, did not have a private right of action under the state's relatively new anti-bullying statute, Conn. Gen. Stat. § 10-222d.

In Santoro v. Town of Hamden, the court found, *inter alia*, that the school board was entitled to sovereign immunity because it was acting as an agent of the state. In addition, the court concluded that there was insufficient indicia that the legislature intended to create a private right of action under 10-222d. Finally, the plaintiffs' claim for injunctive relief also fell by the wayside as the request was "too vague and imprecise": there lies great discretion by school boards in implementing anti-bullying policies, and the court was loathe to fashion injunctive relief which would "not unduly interfere with governmental function."

The case, however, leaves open the issue of whether other remedies exist for children who are victims of bullying in the public schools. While the statute appears not give rise to a private right of action for damages (so says Judge Robinson), the question remains open as to what remedies might be available pursuant to IDEA or other civil rights statutes (as well as traditional tort remedies).

KidsCounsel®

www.kidscounsel.org
Online Access to Professional Resources

KidsCounsel Newsletter

Interdisciplinary Training Seminars

ListServ

Legal Resource Center

Technical Assistance

KidsCounsel®

University of Connecticut School of Law
Center for Children's Advocacy
65 Elizabeth Street
Hartford, CT 06105

RETURN SERVICE REQUESTED

Non-Profit
U.S. Postage Paid
Permit No. 4759
Hartford, CT 06101